Supreme Court, U.S.
FILED

95 • 733 NOV 6 - 1995

OFFICE OF THE CLERK

No. ____

In The

Supreme Court of the United States

October Term, 1995

WILEY STEWART,

Petitioner,

versus

CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, AND JAMES E. SUDDUTH, MAYOR OF LAKE CHARLES,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Attorneys for Petitioner:
Jones & Jones

JOHNNIE A. JONES, SR (Bar No.8329)
JONES & JONES ATTORNEYS AT LAW
State National Life Building
263 Third Street, Suite 702
Baton Rouge, Louisiana 70801-1703
Telephone: 504/383-8573
Fax: 504/383-1276

Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

THE QUESTION PRESENTED FOR REVIEW

Whether respondents' deliberate and concerted action in denying petitioner's, an African-American developer's, application for a **Minor Conditional Use Permit** to build thirty-six (36) medium-income housing units within an empirically residentially zoned neighborhood in the City of Lake Charles, Louisiana, for single-family homes consisting predominantly of middle-income white families, where it is shown that Petitioner has the capability and the wherewithal to construct the units with HUD's assistance; but the concerns of the governmental authority of the City of Lake Charles and the well-orchestrated opposition of the white residents of the neighborhood, the selected area of the site of the proposed construction of the units, were perpetuation of a traditionally racially segregated referred to in the trial testimony as **"a nice quite neighborhood"** to be protected from **"rape, murder, incest,** and **general disorder,"** the opposition suspiciously feared the construction of the 36 medium-income units would create being developed and built by an African-American developer in the predominantly white neighborhood consisting of single-family dwellers, violates the Fair Housing Act (42 U.S.C. §§ 3601 et seq.), where respondents failed to demonstrate that the denial of Petitioner's application for **Minor Conditional Use Permit** was in furtherance of a legitimate governmental interest paramount to Petitioner's rights not to be racially discriminated against as accorded to him under the Fair Housing Act?

LIST OF PARTIES TO THE PROCEEDING

THE PETITIONER IS:

WILEY STEWART, a native born African-American, a citizen of the United States and of the States of Louisiana, residing and maintaining his place of residence and domicile in the City of Lake Charles, Parish of Calcasieu, State of Louisiana. He is a licensed building contractor, electrician, and real estate developer; and owner of a lumber yard (company).

THE RESPONDENTS ARE:

1. CITY OF LAKE CHARLES, is a municipal corporation, within the Parish of Calcasieu, Louisiana, organized and existing under the laws of the State of Louisiana.

2. LAKE CHARLES PLANNING AND ZONING COMMISSION, is a body politic created by the City of Lake Charles, and authorized by the City of Lake Charles to oversee planning, development and land use within the City of Lake Charles.

3. JAMES E. SUDDUTH, is (or was) the Mayor of the City of Lake Charles, and as such is (or was) the Chief Administrative Officer responsible for overseeing the management of the City of Lake Charles and operations of its various departments, etc.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vi

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

ARGUMENT 9

A. APPLICABLE PRINCIPLES 10

B. THE RESPONDENTS' DELIBERATE AND CONCERTED ACTION IN OBJECTING TO AND PREVENTING THE ISSUANCE OF A MINOR CONDITIONAL USE PERMIT TO PETITIONER TO BUILD 36 MEDIUM-INCOME HOUSING UNITS IN AN AREA OF A PREDOMINANTLY WHITE NEIGHBORHOOD IN THE CITY OF LAKE CHARLES, LOUISIANA, WERE RACIAL IN NATURE WITH REGARD TO TREATMENT OF PETITIONER AND IMPACT UPON MINORITIES 12

TABLE OF CONTENTS – Continued

Page

C. PETITIONER IS ENTITLED TO DAMAGES WHERE THE CITY'S REFUSAL TO GRANT PETITIONER A MINOR CONDITIONAL USE PERMIT FORCED PETITIONER TO ABANDON HIS PLANS TO BUILD THE 36 HOUSING UNITS AND CAUSED PETITIONER TO LOSE DEALS THAT WERE IN THE MAKING AND SUPPORTING CONSTRUCTION OF THE UNITS 15

CONCLUSION 17

APPENDICES:

A. OPINION/PER CURIAM OF THE COURT OF APPEALS 1a

B. OPINION OF THE TRIAL COURT 1b

C. JUDGMENT OF THE TRIAL COURT 1c

D. SUPREME COURT – JURISDICTION 28 U.S.C. § 1254(1) 1d

E. FAIR HOUSING ACT 42 U.S.C. §§ 3601, 3602, 3604, 3605, AND 3608 ..... 1e

§ 3601 – Declaration of Policy 1e

§ 3602 – Definitions 1e

§ 3604 – Discrimination in the Sale or rental of housing 4e

§ 3605 – Discrimination in the financing of housing 11e

§ 3608 – Administration 13e

F. COMPLAINT 1f

TABLE OF CONTENTS – Continued

Page

G. PLAINTIFF'S PRETRIAL STATEMENT 1g

H. CODE OF ORDINANCES OF THE CITY OF LAKE CHARLES, LOUISIANA **(Appendix A – Zoning)**..... 1h

TABLE OF AUTHORITIES

Page

CASES:

Fishman v. Estate of Wirtz, 594 F. Supp. 853 (ND Ill. 1984) 17

Griggs v. Duke Power Company, 401 U.S. 424, 91 S. Ct. 849, 28 L.Ed.2d 158 (1971) 18

Hamilton v. Svatik, 779 F.2d 383 (7th Cir. 1985) ...12, 16

HUD on behalf of Herron v. Blackwell, 908 F.2d 864 (11th Cir. 1990) 17

Huntington v. Huntington Branch, NAACP, ___ U.S. ___, 109 S.Ct. 276, 102 L.Ed.2d 180 (1988) 11

Huntington Branch, NAACP v. Huntington, 844 F.2d 926 (2d Cir. 1988) 11

Jorman v. Veteran Administration, 579 F.Supp. 1418 (ND Ill. 1984) 10

Martin v. Constance, 843 F.Supp. 1321 (ED Mo. 1994) 10, 17

Miller v. Apartments & Homes, Inc., 646 F.2d 101 (3rd Cir. 1981) 17

Shelly v. Kraemer, 334 U.S. 1, ___ S.Ct. ___, 92 L.Ed. 1176 (1948) 11, 14

Stackhouse v. DeSitter, 620 F.Supp. 208 (ND Ill. 1985) 10

Smith v. Cleveland Height, 760 F.2d 720 (6th Cir. 1985) 11

U.S. v. Birmingham, 727 F.2d 560 (6th Cir. 1984) 16

U.S. v. Columbus Country Club, 915 F.2d 877 (3rd Cir. 1990) 10

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONS:

None.

STATUTES:

Federal Statutes:

28 U.S.C. § 1225(1) 1

Fair Housing Act, 42 U.S.C. §§ 3601 et seq.... *passim*

RULES:

None.

OTHERS:

None.

The petitioner, WILEY STEWART, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, p. 1a) is not reported; and is an appropriation of the opinion (App. B, pp. 1b-23b) by the trial Court; and the judgment (App. C, p. 1c) of the trial Court.

JURISDICTIONAL STATEMENT

The opinion of the Court of Appeals (App. A, p. 1a) of which review is sought, was entered on August 7, 1995, and received by Petitioner's counsel of record on August 8, 1995. A rehearing was not sought.

The jurisdiction of the Court is invoked under 28 U.S.C. §§ 1254(1). (App. D, pp. 1d).

STATUTORY PROVISIONS INVOLVED

The Fair Housing Act (42 U.S.C. §§ 3601, 3602, 3604, 3605, 3608)(App. E, pp. 1e-13e), as will more fully appear by reference to the Complaint (App. F, pp. 1f-7f), and Plaintiff's Pretrial Statement (App. G, pp. 1g-16g).

The pertinent text of the foregoing are set forth in the respective Appendix.

STATEMENT OF THE CASE

On August 20, 1992, petitioner, WILEY STEWART, filed his complaint (App. F, pp. 1f-7f) in the United States District Court for the Western District of Louisiana (Lake Charles Division), alleging that the respondents, CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, and JAMES E. SUDDUTH, Mayor of Lake Charles, had unlawfully discriminated against him, **based on race**, in violation of the Fair Housing Act 42 U.S.C. §§ 3601 et seq.)(App. E, 1e-13e); and this action, in due course, pursuant to regular assignment, and by a **bench trial,** concluded in an adverse opinion (App. B, pp. 1b-23b); and judgment (App. C, P. 1c) against petitioner in the trial Court.

Petitioner, WILEY STEWART, is a licensed building contractor and electrician, and a real estate developer, and a native-born African-American citizen of the United States and of the State of Louisiana, who, at all times pertinent to this case, resided in the City of Lake Charles, Louisiana.

On May 10, 1990, Petitioner executed a purchase agreement with J.G. Gray to purchase 25 lots abutting and surrounding the American Legion Post (Williamson Post No. 1), the property mainly in dispute herein.

The land around the proposed project site of the 36 medium-income rental units in dispute encompassed the entire block near Ninth and Tenth Streets and First Avenue. It is a lower medium-income neighborhood.

A second proposal involved six (6) units at the site of Second Avenue and Fourth Street, also, in Lake Charles, Louisiana.

In the vicinity of the proposed 36-unit project are two housing projects for low-income and elderly, two school, recreational/sports facilities including a swimming pool, baseball park, and city park, and approximately 470 single-family residences and apartments. The area is predominantly white with less than 33$^{1}/_{3}$% black residents – clustered as a buffer between the whites and the railroad track.

After Petitioner entered into the purchasing agreement to buy the land from J. G. Gray Estate, Petitioner approached the United States Department of Housing and Urban Development (HUD) to propose building the medium-income rental units in the City of Lake Charles, Louisiana, near Ninth and Tenth Streets and First Avenue. At the time, HUD was in a mode of financially promoting and backing such projects and loans. Thus, in the preliminary discussions with HUD, Petitioner received encouragement from HUD and felt that a loan of ninety (90%) percent of $2,500,000.00 estimated cost of building the medium-income units would be approved by HUD once he got approval of his application by the respondents.

In conjunction with his discussion with HUD, Petitioner obtained preliminary schemata or drawings of the proposed construction from a licensed architect with whom he had worked in the past and envisioned working in the future once he received grant of the zoning permit

from the respondent, City of Lake Charles. The zoning permit was denied.

With the underpinning for his building development laid, Petitioner filed with the respondent, CITY OF LAKE CHARLES, two (2) applications for **Minor Conditional Use Permit.** The first Application, Number **0434,** to construct 36 medium-income housing units or duplexes in one of the City of Lake Charles's predominantly white neighborhoods, was filed June 15, 1990, the second Application, Number **0435,** to build six (6) additional medium-income units in a predominantly black neighborhood was filed June 18, 1990.

From the very beginning, there was a well-orchestrated opposition to Petitioner's building of the 36 units in the Gray Subdivision, a predominantly white section of the City of Lake Charles, Louisiana. And with the input of Lake Charles's officials, the largely, if not exclusively white residents of the area surrounding this proposed site determined to **stop** the grant (the awarding) of the permit on Petitioner's Application to build the 36 medium-income unit at every level and stage of the process.

Thus, although City Planner Ernest Broussard initially put petitioner, WILEY STEWART, at ease, advising that there had never before been any rejections of similar applications. However, when Petitioner began returning to City Planner Broussard's office to check on the status of his Applications, he kept getting the **"run-around"** and other delaying tactics used by the respondent, CITY OF LAKE CHARLES. This greatly concerned Petitioner as **"time was running out"** to notify HUD that he had

secured zone-approval of the site and had received permission from the respondent, CITY OF LAKE CHARLES, to construct the 36 medium-income housing units. Petitioner sought to get the respondent, CITY OF LAKE CHARLES, to give him a date as to when the Petitioner's Application would be acted upon; but the respondent, CITY OF LAKE CHARLES, never did. Nor did this Respondent inform Petitioner of the **swelling** opposition to his project during initial meetings and application stages. Rather one and one half (1½) months after petitioner filed his application, or on or about July 25, 1990, City Planner Broussard presented Petitioner with a letter drafted by the respondent, CITY OF LAKE CHARLES, stating that Petitioner was withdrawing his application.

In urging Petitioner to withdraw his application, City Planner Broussard stated that there was going be a **"fight"** from the "Mayor," the "City Council," and the "white residents" of the area.

Petitioner neither read nor signed the Respondent's prepared letter to withdraw his Application, but, instead, emphasized that he could build the housing units according to the City's ordinance and zoning requirements. City Planner Broussard reiterated that "they" were not going to let him build those units "over there," adding that "these people do what they want to do."

In an attempt to allay the fears about apartment development in residential areas, Petitioner offered to build single residential units instead of duplexes. But City Planner Broussard refused to accept this compromise, and **told** petitioner he could submit another application after one year had passed. It then became apparent

to Petitioner that he would not get the City of Lake Charles's approval (a permit to build) even after a year had passed and, moreover, he would lose all of his financial groundwork and the inroad he made to HUD. City Planner Broussard turned Petitioner out of his office, telling him not to come back, and to deal with him again on his application through an attorney.

By circumvention of its Ordinance (App. H, pp. 1h-55h) and Planning Office's Requirements, the respondent, CITY OF LAKE CHARLES, as City Planner Broussard stated when he unsuccessfully pressured the petitioner, WILEY STEWART, to sign the withdrawal of application letter drafted by the respondent, CITY OF LAKE CHARLES, "these people do what they want to do."

Petitioner's Application for a **Minor Conditional Use Permit** to build the 36 medium-income units in the proposed site was approved by the Planning Department of the respondent, CITY OF LAKE CHARLES; and that its water, sewerage, drainage, fire, and engineering departments determined that the project would not impede any of the their systems. However, these departments responded with their respective determinations of approval late, more than the fifteen (15) days after submission of the Application as required by the Code of Ordinances of the City of LAKE CHARLES, LOUISIANA (App. H, p. 14h).

Indeed contrary to the City Planning Department's usual notification procedures to applicants who have had their permits granted, this notice was not forthcoming to petitioner, WILEY STEWART.

The respondent, CITY OF LAKE CHARLES, in addition to its many variances from its usual procedure of handling such applications, it failed to notify petitioner, WILEY STEWART, of the concerns of its internal offices regarding the engineering and construction of his proposed housing development. Instead the respondent, CITY OF LAKE CHARLES, followed (carried out) the informal notice given it by City Councilman David Painter to **"hold final approval"** of the application until a July meeting could be held with one of the leading officials staunchly opposing the project, David Painter [and Chuck McPherson]. Final Approval of Petitioner's application was withheld until City Councilman David Painter could file his July 17 appeal of the City Planning Department's preliminary and unofficial approval of Petitioner's application. And, by **holding final approval,** at the request of City Councilman David Painter, greater leeway and time was given to the respondent, CITY OF LAKE CHARLES, to orchestrate and garner opposition to Petitioner's application for a **Minor Conditional Use Permit** to build 36 medium-income units (duplexes) in the area of the predominantly white neighborhood in a single-family zoned district. So, when the meeting was held August 20, 1990, by City's Planning and Zoning Commission, upwards of **450 white residents** met to protest against the issuance of the permit to Petitioner.

As the August 20, 1990, meeting progressed, or, rather, as this appeal process was taking place, members of the Planning and Zoning Commission, consistent with the tenor of the opposition in attendance at that meeting, received calls in opposition expressing fears that an approval of Petitioner's Application would cause a

"change of the community." The **white residents** wanted to **"preserve the neighborhood."** One representative of the City feared that it would change the **"flavor"** of the neighborhood, which later clarified to mean **"character"** of the neighborhood, although it was clear that Petitioner's application would preserve the residential nature of the area around the proposed site where petitioner applied for and desired to build the 36 medium-income units. However, City Councilman William Prejean testified , the project would bring in **"rape, murder,** and **incest,"** and **"create general disorder"** thus ruining the neighborhood.

Confronted with such tactical and concerted opposition, Petitioner's application to construct multifamily duplex homes in the predominantly white neighborhood was denied by the City Planning and Zoning Commission.

Petitioner, WILEY STEWART, further appealed the adverse ruling of the City's Planning and Zoning Commission to the City Council; but, on August 28, 1990, the City Council refused a hearing on his appeal. The votes for and against, by the City's Planning and Zoning Commission and the City Council, took place along racial lines regarding Petitioner's two applications.

The respondent, CITY OF LAKE CHARLES, notified Petitioner's of its adverse ruling by letter dated August 29, 1990. Not long after that, the white residents met in the building of the American Legion Post to discuss purchasing the land to **keep** Petitioner's from renewing his application and to prevent him from buying the land and from building the 36 medium-income multifamily duplex

homes. The white residents got-together, raised the necessary money to buy the property; and to buy the property for and in the name of the American Legion Post **(Williamson Post No. 1).**

ARGUMENT

The Fair Housing Act is to provide for fair housing throughout the United States without regard to racial distinctions. The language of the Act is broad and inclusive, and subject to generous construction. It has for its purpose, the promotion of neighborhood integration, rather than merely outlawing invidious discrimination.

Petitioner, WILEY STEWART, has shown discriminatory practice to be found unlawful by (1) disproportionate impact on one race (**black,** or rather, **African-American**); and (2) by intentional perpetuation of segregated housing patterns and prevention of interracial association.

The respondents, CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, and JAMES E. SUDDUTH (Mayor of Lake Charles), failed to establish valid non-discriminatory reasons sufficiently substantial to justify the racially discriminatory effect.

Although the respondents articulated pretextual reasons for denying Petitioner's application for a **Minor Conditional Use Permit,** the entire circumstances surrounding that denial is flawed with racial animus.

A. Applicable Principles

The declared policy of the Fair Housing Act is to provide for fair housing throughout the United States without regard for, among other things, racial distinctions 42 U.SC. §§ 3601 et seq. As is clear from the stated policy, this language is broad and inclusive and subject to generous construction. *Stackhouse v. DeSitter*, 620 F. Supp. 208 (ND Ill. 1985). And the courts have held that the promotion of neighborhood integration, rather than simply outlawing invidious discrimination, is an important goal of the Fair Housing Act (42 U.S.C. § 3604). *Jorman v. Veterans Administration*, 579 F. Supp. 1418 (ND Ill. 1984); *U. S. v. Columbus Country Club*, 915 F.2d 877 (3rd Cir. 1990). Thus, discriminatory housing practices may be found either because it is shown to have disproportionately adverse effect on minorities or because it is motivated by a racially discriminatory purpose.

Under the method of establishing a violation under the antidiscrimination provision of the Fair Housing Act (42 U.S.C. § 3604(f) is by proving discriminatory effect, (1) Petitioner need prove no more than that the defendants' conduct actually or predictably resulted in discrimination; and (2) effect, and not motivation, is the touchstone. *Martin v. Constance*, 843 F. Supp.1321 (ED Mo. 1994).

Overwhelming white suburbs' zoning regulation which restricted private multi-housing projects to largely minority urban renewal area, and Town Board's refusal to amend that ordinance to allow construction of subsidized

housing in a white neighborhood, violated the Fair Housing Act (42 U.S.C. §§ 3601 et Seq.). *Huntington v. Huntington Branch, NAACP,* ___ U.S. ___, 109 S.Ct. 276, 102 L.Ed.2d 180 (1988); *Huntington Branch, NAACP v. Huntington,* 844 F.2d 926 (2d Cir. 1988); *Smith v. Cleveland Height,* 760 F.2d 720 (6th Cir. 1985).

A showing of discriminatory intent is not required to establish cases of disparate impact under the Act since an intent requirement would strip the statute of all impact on de facto segregation. *Huntington Branch, NAACP v. Huntington,* 844 F.2d 926 (2d Cir. 1988); And would be turning back to restrictive covenants as were before this Honorable Court in the case of *Shelly v. Kraemer,* 334 U.S. 1, 92 L.Ed. 1176.

In this racial animus case under 42 U.S.C. § 3604, petitioner, WILEY STEWART, established a prima facie case by showing that (1) he belongs to a minority, (2) respondents knew Petitioner was an African-American, (3) he was ready to proceed with the processing of his application for the development and construction of the 36 medium-income housing units on the site near the predominantly white neighborhood of single-family residents, and (4) respondents refused to deal with petitioner. The respondents failed to show that the denial of Petitioner's application was without racial animus; and respondents' good reason for refusing to amend the City Ordinance to allow construction of the 36 medium-income units (duplexes) in the predominantly white neighborhood district zoned for single-family residents devoid of circumstances from which it may be inferred

that there was real though subtle purpose of discrimination. Cf. *Hamilton v. Svatik*, 779 F.2d 383, 387 (7th Cir. 1985).

B. The Respondents' Deliberate and Concerted Action in Objecting to and Preventing the Issuance of a Minor Conditional Use Permit to Petitioner to Build 36 Medium-Income Housing Units in an Area of a Predominantly White Neighborhood in the City of Lake Charles, Louisiana, Were Racial in Nature With Regard to Treatment of Petitioner and Impact Upon Minorities

1. The evidence shows that the respondents acted with a racially discriminatory purpose in their disparate treatment of Petitioner when he applied for a Minor Conditional Use Permit to build 36 Medium-Income duplex rental housing units within a predominantly white neighborhood of single-family residents in the City of Lake Charles, Louisiana

The record will show that petitioner, WILEY STEWART, testified in a totally straightforward manner; the facts of his testimony being corroborated by the evidence and testimony of other witnesses. This type testimony contrast with that of the respondents, where respondent, Mayor JAMES SUDDUTH, stated that his memory was like that of "President Reagan"; where the City Planner, Ernest Broussard, stated that the City's "people do what they want to do"; and where the concerns of the respondents and the witnesses testifying on their behalf

were the preservation of that area of the City of Lake Charles, Louisiana, for the predominantly white neighborhood single-family residents to which the witness, City Councilman David Painter referred to as "nice quiet neighborhoods"; and City Councilman William Prejean felt the preservation was necessary to protect the character of the predominantly white neighborhood from "rape, murder, and incest," and would "create general disorder."

The City's Planner, Ernest Broussard, in trying to get Petitioner, WILEY STEWART, to withdraw his application, stated that there was going to be a "fight" from the "Mayor," the "City Council," and the "white residents" in the area, if he would not withdraw his application.

2. The respondents violated the Act by engaging in unlawful discriminatory housing practices to perpetuate the empirical pattern, practice, custom and policies of racial discrimination and segregation in housing in the City of Lake Charles, Louisiana

Petitioner, WILEY STEWART, established a prima facie case under the Fair Housing Act (42 U.S.C. §§ 3601 et seq.) by disproportionate impact on the African-American race; and by perpetuation of segregated housing patterns and prevention of interracial association. Petitioner who was known to respondents to be an African-American real estate developer and who approached respondents with a plan to develop medium-income housing units on sites in largely white neighborhoods, was denied his application for a **Minor Conditional Use Permit** to build 36 medium-income housing units. In fact, the

neighborhood opposition to Petitioner's construction plan was exclusively white; even though, some of the respondents' witnesses testified that a few **blacks** signed the petition protesting Petitioner's development, they could not name, nor point out on the signed petition the name of a single African-American, or a **black** person.

It is established, Petitioner is the only **black** real estate developer within the City of Lake Charles, Louisiana, with the exception of possible one other, who had built an apartment complex in a **minority area** with mixed **commercial zoning.** Or to state it simply, **no black** developer had any such housing units within the City of Lake Charles; and minority development in the City of Lake Charles was and is glaringly disproportionate.

Respondents did not, and could not, establish valid, nondiscriminatory reasons to justify racially discriminatory effect. However, the respondents contend that Petitioner could construct his housing complex at another. locale, or site; which corroborated Petitioner's testimony that City Planner Ernest Broussard warned him that the opposition was not going to let him build the 36 units on the proposed site in the predominantly white neighborhood.

Respondents blatantly disregarded the statutory policy and liberal construction of the Fair Housing Act to foster integration in housing. Thus, it is clear that respondents denial of petitioner's application to build and develop rental housing units perpetuates the customs, patterns, practices, and policies of long-standing racial discrimination and segregation in housing – predating *Shelly v. Kraemer,* 334 U.S. 1, 92 L.Ed. 1176 (1948).

C. Petitioner is Entitled to Damages Where the City's Refusal to Grant Petitioner a Minor Conditional Use Permit Forced Petitioner to Abandon his Plans to Build the 36 Housing Units and Caused Petitioner to Lose Deals in the Making Supporting Construction of the Units

Respondents contend Petitioner has not suffered any damages because his plan was infeasible and/or because he could have constructed his multifamily complex at another locale. However, Petitioner had already signed a contract with J. G. Gray Estate, the owner of the land on which he hoped to build, to purchase that land. In addition, the site which Petitioner chose had to be and was self-sufficient. HUD was in a mode, at that time, for backing such projects. But as HUD employees, Jose Pagan and Richard Pierce, testified, although Petitioner may have had verbal affirmations of financial outlay and support for his development, it was **"essential"** that the City grant the permit and give the go ahead to build; otherwise everyone would be merely **"wasting time and money."** Thus, as Petitioner credibly testified, his application and the project were **"killed with delays."**

Calcasieu Marine National Bank Vice-President, Greg Webb, testified that Petitioner was in that bank several times a week to discuss the project; but, Petitioner's plans had to be abandoned because the City refused to deal with Petitioner.

Bank Vice-President Webb testified that Petitioner was a regular borrower of the bank, the bank required regular and periodic appraisals of Petitioner's worth; that Petitioner was truthful and honest in the information he furnished the bank and in his dealing with others.

Moreover, petitioner, WILEY STEWART, is a licensed contractor and electrician. It was Petitioner's plan to be the general contractor for the project. But, not only would Petitioner have realized substantial savings in this manner, also, Petitioner is the owner of his own lumber yard (company) and expected to purchase materials directly from distributors. In this way, Petitioner estimated that he would have realized upwards of $500,000.00 in savings which he would not have to borrow from the bank. Taking into consideration this **"sweat equity,"** expert witness, Dr. Kenneth Eugene Lehrer's estimation of costs and damages is reasonable.

Therefore, Petitioner's financial statements, his property values as appraised periodically by the bank, and Petitioner's **"sweat equity"** establish unequivocally that Petitioner had the capability of funding the medium-income housing project at a cost of **2.5 Million Dollars** with the assistance of HUD mortgage insurance (security).

The purpose of remedying violations of the Fair Housing Act is to make whole victims of unlawful discrimination. *U. S. v. Birmingham*, 727 F.2d 560 (6th Cir. 1984); *Hamilton v. Svatik*, 779 F.2d 383, 388-389 (7th Cir. 1985). It was the respondent, CITY OF LAKE CHARLES, that reversed the go ahead on Petitioner's proposed construction plan, which was contingent upon the City's cooperation in granting the **Minor Conditional Use Permit.**

The respondent, CITY OF LAKE CHARLES, should not be allowed to profit from its wrongdoing or to avoid

liability and payment of damages for its unlawful discrimination against petitioner, WILEY STEWART. *HUD on behalf of Herron v. Blackwell*, 908 F.2d 864 (11th Cir. 1990); *Miller v. Apartments & Homes, Inc.*, 646 F.2d 101 (3rd Cir. 1981); *Fishman v. Estate of Wirtz*, 594 F.Supp. 853 (ND Ill. 1984), reversed in part and vacated in part 807 F.2d 520 (7th Cir. 1986)(damages allow where denial of lease resulted in antitrust violation).

CONCLUSION

The mere construction of medium-income housing units by an African-American developer in a predominantly white neighborhood of single-family residents would not have adverse effect on neighborhood security, property values, or crime rate because of a suspicion that the character of the neighborhood would change where the developer of the project of the medium-income units is African-American-the opposition and all other worries were baseless. Cf. *Martin v. Constance*, 843 F.Supp. 1321 (ED Mo. 1994).

According to the **"effects test"** doctrine, in determining the existence of discrimination, courts below were free to look at the effects of perpetuating segregated predominantly white neighborhoods, as well as the respondents' motive and conduct for opposition to Petitioner's application for a **Minor Conditional Use Permit** to build **36** medium-income units in the empirically predominant white segregated neighborhood of single-family residents in the City of Lake Charles, Louisiana. Cf.

Griggs v. Duke Power Company, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971).

WHEREFORE, on these submissions, petitioner, WILEY STEWART, prays that a writ of certiorari be granted to review the opinion and judgment of the United States Court of Appeals for the Fifth Circuit, which is an adoption of the opinion and judgment of the United States District Court for the Western District of Louisiana, Lake Charles Division.

Respectfully submitted,

JOHNNIE A JONES SR (Bar No. 8329)
JONES & JONES ATTORNEYS AT LAW
State National Life Building
263 Third Street Suite 702
Baton Rouge Louisiana 70801-1703
Telephone: 504/383-8573
Fax Number: 504/383-1276

No. _____

In The

Supreme Court of the United States

October Term, 1995

WILEY STEWART,

Petitioner,

versus

CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, AND JAMES E. SUDDUTH, MAYOR OF LAKE CHARLES,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals Fifth Circuit

APPENDIXES

APPENDIX 'A'

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-30285
Summary Calendar

WILEY STEWART,

Plaintiff-Appellant,

versus

CITY OF LAKE CHARLES, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Louisiana
(92-CV-1591)

(Filed Aug. 7, 1995)

Before POLITZ, Chief Judge, HIGGINBOTHAM and BENAVIDES, Circuit Judges.

PER CURIAM:*

Wiley Stewart appeals an adverse judgment following the bench trial of his action involving the Fair

---

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Housing Act, 42 U.S.C. §§ 3601 *et seq.* Finding neither clearly erroneous findings of fact, abuse of discretion nor error of law, and on the facts as found, authorities cited, and reasons assigned in the careful and comprehensive opinion by the trial court filed February 23, 1995, the judgment appealed is AFFIRMED.

APPENDIX 'B'

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

WILEY STEWART	*	CIVIL ACTION NO.
VERSUS	*	92-1591
	*	
CITY OF LAKE CHARLES,	*	JUDGE TRIMBLE
LAKE CHARLES	*	MAGISTRATE JUDGE
PLANNING AND ZONING	*	WILSON
COMMISSION, AND JAMES	*	
E. SUDDUTH, MAYOR OF	*	(Filed Feb. 23, 1995)
LAKE CHARLES	*	
	*	

OPINION

The plaintiff, Wiley Stewart, has brought this civil action under the Fair Housing Act, 42 U.S.C. §§ 3601, et seq. The alleged violation of this Act arose during Plaintiff's application to the City of Lake Charles (the "City") for a Minor Conditional Use Permit. Such a permit was necessary for the construction of a thirty-six unit, multi-family complex which Stewart hoped to place on the parcel of land bordered by 1st Avenue to the West, 9th Street to the North, 2nd Avenue to the East, and 10th Street to the South (the "site"). This matter was tried before this Court, sitting without a jury, on November 7-10, 1994.

SUMMARY OF THE RELEVANT EVIDENCE

TESTIMONY OF PLAINTIFF:

Wiley Stewart testified that he is a black American citizen. As a black applicant for the Minor Conditional Use Permit (the "permit"), he was treated "unfairly," and "differently" from the white applicants.

On June 15, 1990, he submitted his application for the permit for the 36-unit site (to consist of 18 duplexes). He had a discussion with Ernie Broussard, the Director of the Department of Planning and Development, in which Stewart told Broussard that he had received assurance from the Department of Housing and Urban Development ("HUD") that it would supply him with an insurance letter of guaranty in the amount of 90% of the expected loan. This was a verbal commitment from HUD. He had met with Jose Pagan, Executive Director of HUD in New Orleans. Broussard told Stewart that he could put 36 units on the site and that there had never been any problems getting approval for such a permit.

A few days later, Stewart returned with drawings of the units. He spoke to Wes Crane, a City Planner. He believed he was getting the "runaround" from the various departments about the approval. One day, Broussard called Stewart and asked him to withdraw his application. Stewart went to Broussard's office where Broussard handed him a type-written letter requesting the withdrawal of the application which Broussard asked him to read and sign. Stewart did neither. Broussard told Stewart, "They are going to fight you." "They" meant the City Council, the Mayor, and the white residents. Stewart volunteered to switch from duplexes to single units.

Broussard replied that Stewart would have to withdraw his application and wait for a period of one year before re-applying. Stewart was concerned about losing his HUD application if he was forced to wait. Before HUD could proceed on his application, he needed the permit from the City. Broussard asked him to leave.

Later, Stewart returned to retrieve copies of the documents in his file. In the file, there was a letter from City Councilman David Painter appealing the Department of Planning and Development's approval of the permit. This appeal was filed on July 17, 1990, which Stewart believed to be beyond the 15-day timeframe allowed by the ordinance for the filing of appeals. Broussard, the Mayor, and the Planning and Zoning Commission had allowed Painter to file an untimely appeal. Further, because Painter was going to be out-of-town for the next meeting, he had asked that the appeal take place at the August 20, 1990 meeting of the Planning and Zoning Commission. The ordinance specifies that the appeal take place at the next regularly scheduled meeting (which was to be on July 23, 1990). Broussard misrepresented to the Planning and Zoning Commission that Stewart had verbally withdrawn his application. He had not.

At the August 20, 1990 meeting, Stewart told those attending that it was a racial conspiracy against him as a black man. Mayor Sudduth responded that it was not a conspiracy, but a bad ordinance that should be changed. Stewart replied that the ordinance worked for the white builders. Some people at the meeting voiced concern that the development would run property values down, but Stewart believed that the prospective tenants would fit the nature of the neighborhood – medium income, black

and white families. Painter's appeal had stated that the complex would create hazards – fire protection, sewer, and other general disturbances. Fire and sewer were approved. The "other general disturbances" was meant to denote "here come the black folks." No one said that, but that was the general attitude. Stewart believed that white developers were allowed to build similar developments. He cited the treatment that the City and its agencies had given the Queen of Heaven application for a major conditional use permit as an example. Queen of Heaven had been allowed to file three applications in one year. Stewart researched the ordinance and could find no limitation on the number of applications one could file within a year.

Stewart was to be the general contractor for the project. He held a license from the City, but did not have a state license. Although his general contractor's license was not sufficient to undertake the entire project at once, he could get around this by building one unit at a time. If it were necessary, he would have gotten whatever license he needed. He never attempted to find another site for the development.

Stewart never attended any of the neighborhood meetings which were held to organize an opposition to his project. Originally, he believed that only the white residents opposed the development, but later he learned that there were some black residents who were also opposed.

TESTIMONY OF JOSE PAGAN:

Pagan works for HUD in New Orleans. He had met with Stewart and discussed this project. If Stewart did not

have the permit from the City, then he could not get HUD approval. Stewart never applied to HUD, because he was unable to get approval from the City. This development was to involve some type of rental subsidy like Section 8. Opposition to a development does not affect HUD's decision if there is proper zoning. Subsidized housing is rented without regard to race. Pagan did not tell Stewart that HUD would give him a letter of guaranty for 90% of the 2.5 million in projected costs. Having never received any application from Stewart, HUD would not have made any commitment.

TESTIMONY OF JAMES SUDDUTH:

As Mayor, he had nothing to do with the approval of the applications for Minor Conditional Use Permits. He did not object to the application, and does not remember saying that the ordinance should be repealed. He felt that Broussard had followed the proper procedure, and that this was not a racial issue. He said that Stewart was offered the opportunity to build 25 single family units on that site; there would have been no need for a change in the zoning. The application was not denied because Stewart was black, or because it was feared that more blacks would move into the area.

TESTIMONY OF ERNEST BROUSSARD:

He was Director of Economic Development, and a City Planner at that time. He is African-American. When Stewart came in to file his application, they discussed Stewart's discussions with HUD and what Stewart needed to do to get approval of his application for the Minor Conditional Use Permit. There are three levels of

site review: l)uses permissible by right; 2) minor conditional use permit (7 units per acre or less); 3) major conditional use permit. Stewart's site plan was incomplete. The only condition for approval which it met was that it specified less than 7 units per acre. The other conditions for which there were no provisions in the site plan included: access, drainage, sewer, water, and fire protection. Stewart's application was incomplete as it did not contain this necessary information. As a courtesy to Stewart and at city expense, Broussard asked the respective city departments (city engineer, water, waste water, fire department) to review those conditions and supply the information which Stewart's site plan lacked. Broussard could have required that Stewart obtain this information himself. One month after submitting his application, on July 15, Stewart supplied his letter of intent which is technically required for a completed application. However, they approved his application before receiving the letter of intent. Although the various departments did not give written notice that the project was feasible until July 12, 13, Broussard spoke to each and received verbal assurance. After receiving this assurance, he approved the application.

He did tell Stewart that if Stewart withdrew this application he could not revisit this application within one year, but Stewart could submit a materially different application. Further, Stewart needed no zoning change to proceed with a 25-unit detached development.

The Queen of Heaven project was entirely different as it concerned a major conditional use permit. An application for a major use permit may be amended, and it is not considered a new application.

There are other areas in the city in which Stewart could have constructed his 36-unit development without a zoning change. Stewart's City contractor's license had a $50,000 building limit; he would have needed a state license to construct a multi-million dollar development.

Broussard attended two neighborhood opposition meetings at which he was asked to describe what Stewart proposed to develop. There were some black families at those meetings who were concerned about their investment in their homes. He estimated that there were six or seven black persons compared to a total number of approximately eighty people at a meeting. The neighborhood opposition was concerned with sewer, drainage, traffic, and the construction of multi-family dwellings in their residential neighborhood. He stated that Lake Charles is not receptive to multi-family or commercial development.

From the date of the letter to the City Council noticing the approval of the application for the permit, there is a 15-day time limit for a councilmember to appeal the decision to the Planning and Zoning Commission. An appeal automatically vacates the decision of the Director of Planning. Although § 4-203(d) (of the Lake Charles Code) makes reference to a consent agenda of the Planning and Zoning Commission, the Commission never uses a consent agenda. Every appeal is heard on the merits and as a public hearing. The Planning and Zoning Commission meets on the third Monday of the month. City Councilmember Painter registered an appeal on July 17. The next Planning and Zoning Commission meeting was on July 23, but there is a requirement for public hearings that a notice must be run in the paper for three

consecutive weeks. Therefore, the earliest time the Commission could hear the appeal was on August 20. The Commission reversed his decision to grant Stewart's application.

He never made any statement to the effect that the whites would not let Stewart build the project. The only person who interjected the subject of race was Stewart.

TESTIMONY OF DONALD KINGERY:

He was a spokesman for the neighborhood opposition, and appeared before the Zoning Commission. He gathered petitions opposing the development and coordinated the neighborhood's opposition with that of the American Legion Hall. There were black petitioners, but he did not notice how many because race was not an issue. He believed that the development would decrease the value of their homes. He had gotten this information from the tax assessor's office which had reported similar results in other areas. Also, the American Legion Hall which is adjacent to the site would stand to lose 90% of its parking which would mean people would have to park on the street for their bingo games. The American Legion thought this added inconvenience would cause a loss of revenue from the bingo and might cause the American Legion to lose its hall. He had believed it was the Gray Estate (the then owner of the lot) which was planning the development. The neighborhood raised money which it gave to the American Legion in order to buy the lot. The American Legion now owns the lot.

TESTIMONY OF WILLIAM PREJEAN:

He was on the City Council at that time. He appealed the decision of the Director of planning. When he did so, he did not know if Stewart was black or white. He had received many calls from people opposing the project so he had gone and looked at the site himself. He then concluded that the site was not right for that kind of development. The Planning and Zoning Commission turned down the application 4-0.

TESTIMONY OF DAVID PAINTER:

He was City Councilman for the district involved. Initially, he objected to the project because he thought it did not meet the density requirement. Once he found out that it did meet that requirement he did not withdraw his objection because he had learned that his constituents were opposed to the development. He voted that the City Council not hear Stewart's appeal of the Planning and Zoning Commission's decision. The Council did not hear that appeal. His major concerns were traffic, sewerage and water, but even if those conditions were adequate he thought the development was inappropriate. He had asked the Commission to delay its decision until he could attend because it involved his district and his constituents. He was asked to attend one of the opposition meetings where he explained how someone should go about opposing a Council vote. He thinks his district is 35-40% black and 60-65% white. Of those who protested, four or five families were black. He had known Stewart for years, and knew he was black.

TESTIMONY OF RANDALL MILLER:

He is a rural economic developer. One of his functions is to gather and disseminate census information. The census tract in which the site is located has a population of 32.9% white and 67.1% black. The block group in which the site is located has a population of 64% white and 35% black.

TESTIMONY OF OTHER WITNESSES:

RICHARD PIERCE: He worked for HUD, and had briefly discussed Stewart's project with him. Stewart had mentioned the zoning problem.

WESLEY CRAIN: He was a City Planner at the time of Stewart's application, and had approved it. There was no racial motivation.

JAMES HOFFPAUER: He is a licensed architect. He drew the "extremely preliminary" sketches of the development for Stewart; he did not check to see if the City services would be sufficient. In almost every instance, the neighborhood is concerned about the construction of multi-family developments.

CARRIE DIAZ: She was a member of the Planning and Zoning Commission, but did not attend the August 20, 1990 meeting.

FRANK PRICE: He also was a member of the Planning and Zoning Commission, but did not attend the August 20, 1990 meeting.

GREG WEBB: He is the Vice President of Calcasieu Marine National Bank at the Sulpher branch. He had

spoken to Stewart about a loan for the project, but Stewart never submitted a formal application.

KENNETH LEHRER: Expert witness for the plaintiff. He testified regarding the amount of damages.

DENNIS WARE: He was on the City Council at that time. He believes that he did not attend the Planning and Zoning Commission meeting of August 20, 1990.

JULIAN DONDIS: He lives near the site and had opposed the development. He opposed it because he felt that putting in multifamily units would change the nature of the neighborhood. There was a fair representation of the the blacks living in the neighborhood at the opposition meetings. He had never felt race was an issue.

KENNETH SCHEXNYDER: He was on the City Council at the time and voted to have the Council hear Stewart's appeal. He believed Painter's appeal was untimely, and would have voted to approve whatever Stewart was seeking.

FAYE BLACKWELL: She was also on the City Council. She, too, voted to hear Stewart's appeal.

BRUCE KIRKPATRICK: He worked for the Gray Estate. Stewart had signed an offer to purchase the site which the Gray Estate owned. The Gray Estate had sent a letter to the American Legion Hall informing it that its parking area was encroaching on the property to be sold to Stewart.

JOHN NEVILLE: Expert witness for the defendants. He controverted the figures used by the plaintiff's expert.

APPLICABLE LAW

This action is based on an alleged violation of the Fair Housing Act, 42 U.S.C. §§ 3601, et seq. (the "Act"). The Act declares that it is the policy of the United States to provide, within constitutional limitations, for fair housing within the United States. 42 U.S.C. § 3601. Under the Act, it is unlawful for a person to "make unavailable . . . a dwelling to any person because of race, color, religion, sex, or national origin." 42 U.S.C. §3604(a). The Act applies to municipalities. *Keith v. Volpe*, 858 F.2d 467 (9th Cir. 1988).

There are two ways to prove a violation of §3604(a). The first is by proving discriminatory intent or treatment; the second is by proving discriminatory effect or impact. *See In Re Malone*, 592 F.Supp. 1135, 1166 (E.D. Mo. 1984); *Stewart B. McKinney Foundation, Inc. v. Town Plan and Zoning Com.*, 790 F.Supp. 1197 (D.Conn. 1992); *McCauley v. Jacksonville*, 739 F.Supp. 278 (E.D.N.C. 1989) (*citing Betsey v. Turtle Creek Associates*, 736 F.2d 983, 986 (4th Cir. 1984)).

To prove discriminatory intent, the evidence need only show that race or color was one factor which motivated the Commission's decision. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977) (*Arlington Heights I*). But because overtly bigoted behavior has become more unfashionable, evidence of intent has become harder to find. *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1293 (7th Cir. 1977), *cert denied*, 434 U.S. 1025, 98 S.Ct. 752, 54 L.Ed.2d 772 (1978)

(*Arlington Heights II*). Absent direct evidence of discriminatory intent, the plaintiff must show more than that the Commission's decision was wrong; it must prove the decision was so arbitrary that it likely resulted from an intent to discriminate. *See Stewart B. McKinney, supra.*, at 1213.

A plaintiff may prove a violation of the Act by proving discriminatory effect alone. *In Re Malone, supra., Huntington Branch, NAACP v. Huntington,* 844 F.2d 926, 934 (2nd Cir. 1988), *Arlington Heights II, supra.*. A prima facie case of discriminatory effect is established by showing that the conduct of the defendant actually or predictably results in racial discrimination. The plaintiff need make no showing whatsoever that the action resulting in racial discrimination was racially motivated. *See Keith v. Volpe, supra., quoting United States v. Black Jack,* 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042, 95 S.Ct. 2656, 45 L.Ed.2d 694 (1975); *Huntington, supra.*.

There are two kinds of racially discriminatory effects which a facially neutral decision about housing can produce. The first occurs when that decision has a greater adverse impact on one racial group than another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups. *Arlington Heights II, supra.*, at 1290. The second type of effect requires an analysis of existing housing patterns and the impact that the proposed project is likely to have on those patterns. *In Re Malone, supra.*, at 1166.

In *Huntington Branch, NAACP v. Huntington, supra.*, the Second Circuit attempted to articulate a test designed to distinguish which analysis is required. The Court stated:

> A disparate impact analysis examines a facially-neutral policy or practice, such as a hiring test or zoning law, for its differential impact or effect on a particular group. Disparate treatment analysis, on the other hand, involves differential treatment of similarly situated persons or groups. The line is not always a bright one . . . , but does adequately delineate two very different kinds of discrimination claims. (*Citing Sobel v. Yeshiva Univ.*, 839 F.2d 18 (2nd Cir. 1988)).

Huntington, supra at 933-4.

Initially, the plaintiff has the burden of establishing a *prima facie* case of discrimination (either discriminatory intent or effect) by a preponderance of the evidence. If he does so, the burden then shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its action. Under the discriminatory intent analysis, if the defendant satisfies this burden, the plaintiff then has the opportunity to prove by a preponderance of the evidence that the reasons asserted by the defendant are, in fact, mere pretext. *Secretary, United States Dep't of Housing & Urban Dev. on behalf of Herron v. Blackwell*, 908 F.2d 864 (11th Cir. 1990) (*citing McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)). Under the discriminatory effect analysis, there must be a weighing of the adverse impact against the defendant's justification. Other factors that may be considered are whether there is any evidence of discriminatory intent,

and whether the plaintiff is suing to compel a governmental defendant to build housing or only to require a governmental defendant to eliminate some obstacle to housing that the plaintiff itself will build. *See Huntington, supra.*, and *Arlington Heights II, supra.*.

ANALYSIS OF LAW AND FACTS

Stewart argues that the defendants' actions were discriminatory in two respects. First, the defendants acted with discriminatory intent in denying Stewart's application because he, the developer, is black. In support of this argument, Plaintiff has cited *Hamilton v. Svatik*, 779 F.2d 383 (7th Cir. 1985)[1] (Plaintiff's Post-Trial Brief, p. 16). Unfortunately, the plaintiff has misapprehended the crux of the law. Stewart was not a prospective tenant in his proposed development. Even if the evidence adduced at trial could support a finding that Defendants denied Stewart a permit based on his race, there would be no violation of the Fair Housing Act which prohibits the refusal to sell or rent or otherwise deny to a person a dwelling on the basis of race. It was not Stewart who was denied a dwelling, but those persons who may have resided in the development. *See Burrell v. Kankakee*, 815 F.2d 1127 (7th Cir. 1987) (no claim cognizable under the

---

[1] In *Hamilton*, an apartment manager had refused to rent an apartment to a black woman. The court stated:

> Under section 3604 a plaintiff establishes a prima facie case by showing that 1) she belongs to a minority; 2) the defendant was aware of it; 3) the plaintiff was ready and able to accept defendant's offer to rent; and 4) the defendant refused to deal with her. (citation omitted).

Fair Housing Act as the defendants' conduct did not directly affect the availability of housing to minorities.). However, there was not a scintilla of evidence other than Stewart's own testimony, to support the allegation that race motivated the denial of the permit.

Secondly, the plaintiff argues that the denial of the permit had a discriminatory effect as it perpetuated segregated housing patterns in the City of Lake Charles. The 1990 Census figures show that the Lake Charles population was 57.5% white, and 41.6% black. (Defense Ex. 3). The Census tract block group in which the property was located reflected a population of 64% white and 35% black. (Defense Ex. 2,4). The plaintiff failed to provide any evidence that the potential racial make-up of the prospective tenants would further integrate the neighborhood. In fact, Plaintiff failed to put on any evidence whatsoever regarding the potential racial proportions of his development. By failing to establish that the denial of the permit either had a greater adverse impact on one racial group than another, or that it perpetuated segregated housing patterns, Plaintiff has failed to establish a *prima facie* case of discriminatory effect. *See Huntington, supra.; Arlington Heights II, supra.; In Re Malone, supra.*.

FINDINGS OF FACT

1. Plaintiff, Wiley Stewart, is a resident of Lake Charles, Louisiana. The Defendants are the City of Lake Charles, a municipality incorporated in the State of Louisiana and its subdivision, Lake Charles Planning and

Zoning Commission and an individual, James E. Sudduth, former Mayor of the City of Lake Charles, in his official capacity.

2. On June 15, 1990, Stewart filed an Application for a Minor Conditional Use Permit with the City of Lake Charles. The permit was necessary to allow the construction of a 36 attached unit development consisting of 18 duplexes in an area which was zoned "Residential."

3. Wiley Stewart is African-American.

4. The Department of Planning and Development for the City of Lake Charles received and processed Stewart's application. The Director of that Department, Ernest Broussard, is African-American.

5. The contemplated construction by Stewart was dependant upon receiving an insurance letter of guaranty in the amount of 90% of the expected loan from the Department of Housing and Urban Development. Stewart, at no time, received a commitment, either written or verbal, for a letter of guaranty.

6. The application submitted to the Department of Planning for the City of Lake Charles was inadequate and incomplete. The application did not contain any information regarding fire protection, drainage systems, water, or sewer services. Although the City could have returned the application to Stewart as incomplete, the Department of Planning attempted to assist Stewart in the processing of his application by itself contacting the various City departments regarding the necessary and essential services.

7. The Director, Ernest Broussard, upon completion of Stewart's incomplete application, granted the minor conditional use permit.

8. During the period the application was under consideration, considerable opposition was voiced by concerned neighborhood residents. These residents were concerned with maintaining the single family residential character of the neighborhood, and maintaining the property values of their homes. The residents also voiced concern about the probable effect the development would have on the parking, and therefore the continued viability, of the American Legion Post. The American Legion Post would lose the great majority of its off-street parking if the development were constructed. These individuals were also concerned with water runoff and sewerage demands which would be created by the development. The Court finds that these concerns are legitimate, and that there is no evidence to suggest that these concerns were subterfuge for racial prejudice.

9. Because the American Legion Post would lose most of its parking if the development were constructed, the majority of those utilizing the Post would be forced to park on the street. This would contribute to an increase in neighborhood traffic congestion.

10. The opposition voiced to the City of Lake Charles came from both white and black residents of the surrounding neighborhood.

11. The neighborhood in the immediate area of this development was approximately 64% white and 35% black in 1990. The overall population of Lake Charles was 57.5% white and 41.6% black.

13. The Department of Planning and Development complied with the Lake Charles Code of Ordinances, Appendix A-Zoning in its consideration of Stewart's application. The application was technically not complete until the City received Stewart's letter of intent on July 15, 1990. However, the Department treated the application as practically complete when it received the information needed from the various City departments regarding essential services. On July 11, 1990, the Department of Planning had received in writing or verbally the assurance that the development was feasible from each of those departments.

14. The letter from the Department of Planning and Development noticing the approval of Stewart's application for the minor conditional use permit was sent on July 11, 1990. The Court finds that this is the day the approval was granted.

15. City Council Member David Painter appealed the approval of Stewart's application on July 17, 1990 to the Planning and Zoning Commission. The Court finds that this appeal was timely under §4203(d) of the Lake Charles Code, Appendix A-Zoning as it was lodged within fifteen (15) days of the approval of the application.

16. The Planning and Zoning Commission hears all appeals at a public hearing. The Code of Ordinances, Appendix A-Zoning requires that before a public hearing, notice shall be published in a newspaper for three different weeks, and that signs be posted on the property in question at least fifteen days prior to the public hearing. Compliance with these public hearing requirements dictated that the first available meeting at which the matter

could be heard was the August 20, 1990 meeting of the Commission. At this meeting, the Planning and Zoning Commission voted four to zero in favor of overturning the action of the Director of Planning, and thereby denied Stewart's application for the minor conditional use permit.

17. Wiley Stewart requested that the City Council review the decision of the Planning and Zoning Commission. The City Council denied his request for review at its August 28, 1990 meeting, and did not hear the matter.

18. In light of the legitimate concerns voiced by the opposition to the development, the racial make-up of that opposition, the generous handling of Stewart's application, and the complete lack of evidence of any discriminatory intent, the Court finds that the Defendants did not possess an intent to discriminate against Wiley Stewart on the basis of his race or against the prospective tenants of his proposed development on the basis of their potential racial make-up.

19. There exist within the City of Lake Charles three zoning classifications which allow for the construction of a 36-unit complex similar to the one proposed by Stewart. These areas are designated "neighborhood," "mixed use," and "business," and would allow for such a construction without a request for zoning variance or a minor conditional use permit. These areas are found throughout the city of Lake Charles, both in neighborhoods which have a greater percentage of blacks than whites, and in neighborhoods which have a greater percentage of whites than blacks.

20. There is no pattern of racially segregated zoning within City of Lake Charles.

21. There is no evidence in the record which suggests that the residents of Stewart's proposed development would vary in racial proportions from the racial proportions that then existed in the neighborhood. The racial ratio which existed in 1990 differed from the overall racial balance of the City of Lake Charles by only approximately 7%. The neighborhood, far from being segregated, approached integration to the extent possible with the racial populations living within the City. Further, there existed areas within the City which were properly zoned for Stewart's development and which had a significantly higher percentage of whites to blacks.

22. The denial of Stewart's application for a minor conditional use permit did not result in the perpetuation of racially segregated housing patterns.

21. The record is devoid of any evidence which tends to establish that any action of the Defendants had a racially discriminatory impact.

CONCLUSIONS OF LAW

1. Plaintiff has the burden of establishing a *prima facie* case of discrimination by a preponderance of the evidence. *Secretary, United States Dep't of Housing & Urban Dev. on behalf of Herron v. Blackwell*, 908 F.2d 864 (11th Cir. 1990).

2. The plaintiff may establish his *prima facie* case by showing discriminatory intent or discriminatory effect. *See In Re Malone*, 592 F.Supp. 1135, 1166 (E.D. Mo. 1984);

Stewart B. McKinney Foundation, Inc. v. Town Plan and Zoning Com., 790 F.Supp. 1197 (D.Conn. 1992); *McCauley v. Jacksonville, N.C.*, 739 F.Supp. 278 (E.D.N.C. 1989), *citing Betsey v. Turtle Creek Associates*, 736 F.2d 983, 986 (4th Cir. 1984).

3. This action involves a disparate impact analysis as it examines a facially-neutral zoning ordinance for its discriminatory effect on a minority group. *Huntington Branch, NAACP v. Huntington, supra.*

4. A prima facie case of discriminatory effect is established by showing that the conduct of the defendant actually or predictably results in racial discrimination. The plaintiff need make no showing whatsoever that the action resulting in racial discrimination was racially motivated. *See Keith v. Volpe, supra.* (*quoting United States v. Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042, 95 S.Ct. 2656, 45 L.Ed.2d 694 (1975)); *Huntington, supra.*.

5. Once the plaintiff has established a *prima facie* case of discrimination, the burden shifts to the defendant show some legitimate, nondiscriminatory reason for its action. *Blackwell, supra.; See also, Huntington, supra.*, and *Arlington Heights II, supra.*.

6. Plaintiff has failed to establish a *prima facie* showing of discrimination which would qualify as a violation of the Fair Housing Act, 42 U.S.C. §3604(a). The plaintiff failed to introduce any evidence to show the racial character of the potential tenants in his development. Nor did the plaintiff introduce any evidence to prove that the denial of the permit had a greater adverse impact on a

racial minority. There was no evidence which demonstrated that the denial of the permit perpetuated racially segregated housing patterns.

7. Even had Plaintiff made a *prima facie* showing of discrimination, the defendants have shown that legitimate governmental concerns motivated the decision to deny the permit. Those concerns were related to the increase in traffic and the loss of the American Legion Hall's parking, the increased demands of the City services for the neighborhood, and the desire of the residents to protect their investments in their homes from a possible decrease in value. Further, under the tests set forth in *Arlington Heights II, supra.* and *Huntington, supra.*, there must be a weighing of the adverse impact or discriminatory effect against the defendants' interest or justification. The plaintiff offered no evidence regarding adverse impact. In light of the defendants' legitimate interests, the scales are clearly tipped in their favor.

The Court will render judgment in accordance with the above findings of fact and conclusions of law.

THUS DONE AND SIGNED this 23rd day of February, 1995, in chambers at Lake Charles, Louisiana.

/s/ James T. Trimble
JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX 'C'

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

WILEY STEWART	*	CIVIL ACTION NO.
VERSUS	*	92-1591
	*	
CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, AND JAMES E. SUDDUTH, MAYOR OF LAKE CHARLES	*	JUDGE TRIMBLE
	*	MAGISTRATE JUDGE WILSON

JUDGMENT

(Filed Feb. 23, 1995)

For the reasons set forth in the opinion of the court this date, it is

ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendant and against plaintiff, dismissing plaintiff's demand with prejudice.

IT IS FURTHER ORDERED that all costs be assessed against plaintiff.

JUDGMENT RENDERED AND SIGNED in Chambers at Lake Charles, Louisiana, this 23rd day of February, 1995.

/s/ James T. Trimble
JAMES T. TRIMBLE, JR.
UNITED STATES
DISTRICT JUDGE

APPENDIX 'D'

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

* * *

(June 25, 1948, ch 646, § 1, 62 Stat. 928; June 27, 1988, P. L. 100-352, § 2(a)(b), 102 Stat. 662.)

APPENDIX 'E'

42 U.S.C. § 3601 PUBLIC HEALTH AND WELFARE

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 801, 82 Stat. 81.)

---

§ 3602. Definitions

As used in this title –

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code [11 USCS §§ 101 et seq.], receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806 [42 USCS §§ 3604, 3605, or 3606].

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 802, 82 Stat. 81; Nov. 6, 1978, P. L. 95-598, Title III, § 331, 92 Stat. 2679.)

---

§ 3602. Definitions

(a)-(e) [Unchanged]

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 [42 USCS §§ 3604, 3605, 3606, or 3617].

(g) [Unchanged]

(h) "Handicap" means, with respect to a person –

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(i) "Aggrieved person" includes any person who –

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 810 [42 USCS § 3610].

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with –

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means –

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a) [42 USCS § 3610(a)].

(o) "Prevailing party" has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

(As amended Sept. 13, 1988, P. L. 100-430, § 5, 102 Stat. 1619.)

---

§ 3604. Discrimination in the sale or rental of housing

As made applicable by section 803 [42 USCS § 3603] and except as exempted by sections 803(b) and 807 [42 USCS §§ 3603(b), 3607], it shall be unlawful –

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or

in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or person of a particular race, color, religion, sex, or national origin.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 804, 82 Stat. 83; Aug. 22, 1974, P. L. 93-383, Title VIII, § 808(b)(1), 88 Stat. 729.)

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices.

[Introductory matter unchanged]

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of –

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of –

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes –

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. [;]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988 [enacted Sept. 13, 1988], a failure to design and construct those dwellings in such a manner that –

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically

handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5) (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraphs 3(C).

(6) (A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act [42 USCS § 3610(f)(3)] to receive and process complaints or

otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term "covered multifamily dwellings" means –

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(As amended Sept. 13, 1988, P. L. 100-430, §§ 6(a)-(b)(2), (e), 15, 102 Stat. 1622, 1623, 1636.)

§ 3605. Discrimination in the financing of housing

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 803(b) [42 USCS § 3603(b)].

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 805, 82 Stat. 83; Aug. 22, 1974, P. L. 93-383, Title VIII, § 808(b)(2), 88 Stat. 729.)

§ 3605. Discrimination in residential real estate-related transactions

(a) In general. It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms of conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Definition. As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance –

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption. Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

(As amended Sept. 13, 1988, P. L. 100-430, § 6(c), 102 Stat. 1622.)

§ 3608. Administration

(a) Authority and responsibility. The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary. The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of hearing examiners; location of conciliation meetings; administrative review. The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such emplyees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise, acting as to work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code [5 USCS §§ 3105, 3344, 5372, 7521]. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes. All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary. The Secretary of Housing and Urban Development shall –

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmately to further the policies of this title.

(Apr. 11, 1968, P. L. 90-284, Title VIII, § 808(a), (b) in part, (c)-(e), 82 Stat. 84; Oct. 13, 1978, P. L. 95-454, Title VIII, § 801(a)(3)(J), 92 Stat. 1222.)

---

§ 3608. Administration

(a)-(c) [Unchanged]

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes. All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) [Introductory matter unchanged]

(1) [Unchanged].

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress –

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which –

(i) investigations are not completed as required by section 810(a)(1)(B) [42 USCS § 3610(a)(1)(B)];

(ii) determinations are not made within the time specified in section 810(g) [42 USCS § 3610(g)];

and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g) [42 USCS § 3612(g)]

(3) [Unchanged]

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices [;]

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public

under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) Provisions of law, etc., to which subsec. (e)(6) applies. The provisions of law and Executive orders to which subsection (e)(6) applies are –

(1) title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.];

(2) title VIII of the Civil Rights Act of 1968;

(3) section 504 of the Rehabilitation Act of 1973 [29 USCS § 794];

(4) the Age Discrimination Act of 1975 [42 USCS §§ 6101 et seq.];

(5) the Equal Credit Opportunity Act [15 USCS §§ 1691 et seq.];

(6) section 1978 of the Revised Statutes (42 U.S.C. 1982);

(7) section 8(a) of the Small Business Act [15 USCS § 637(a)];

(8) section 527 of the National Housing Act [12 USCS § 1735f-5];

(9) section 109 of the Housing and Community Development Act of 1974 [42 USCS § 5309];

(10) section 3 of the Housing and Urban Development Act of 1968 [12 USCS § 1701u];

(11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432 [42 USCS §§ 1982 and 2000e notes,

15 USCS § 631 note, 42 2000d-1 note, 42 USCS §§ 1982 and 3608 note 15 USCS § 631 note];

and

(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

(As amended Sept. 13, 1988, P. L. 100-430, § 7, 102 Stat. 1623.)

APPENDIX 'F'

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

WILEY STEWART, Plaintiff	:	
VERSUS	:	CIVIL ACTION
CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, AND JAMES E. SUDDUTH, MAYOR OF LAKE CHARLES, Defendants	:	NO. CV92-1591

COMPLAINT

I.

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to the Fair Housing Act, 42 USC §3600 *et seq.* and more particularly Section 813 of the Act.

II.

NATURE OF PROCEEDINGS

2. This is a proceeding for a declaratory judgment as to the plaintiff's right to a preliminary and permanent injunction enjoining the defendants from maintaining policies, practices and customs of discriminating against plaintiff on the basis of his race.

III.

PLAINTIFF

3. Plaintiff, WILEY STEWART, is a black American citizen residing in the City of Lake Charles, Louisiana and in the Western District of Louisiana.

IV.

DEFENDANT

4. Defendant, CITY OF LAKE CHARLES, is a municipal corporation organized under the laws of the State of Louisiana and, through its City Council, such rules, regulations and policies governing the conduct of its citizens, the administration of City affairs, and the granting of permits for land users within the City of Lake Charles. It maintains its base of operations in the Western District of Louisiana.

5. Defendant, LAKE CHARLES PLANNING AND ZONING COMMISSION, is a duly constituted political body authorized by the City of Lake Charles to oversee planning, development and land use within the City of Lake Charles.

6. Defendant, JAMES E. SUDDUTH, is the Mayor of the City of Lake Charles, and as such is the Chief Administrative Officer responsible for overseeing the operations of the City, its various departments, and employees.

V.

STATEMENT OF THE CLAIM

7. Plaintiff, WILEY STEWART, approached the United States Department of Housing and Urban Development and proposed to build several middle income rental units in the Watkins Addition in the City of Lake Charles near Second Avenue and Ninth and Tenth Streets. In conjunction therewith, he received assurance from the Department of Housing and Urban Development for a federally guaranteed loan of ninety (90%) percent of two million, five hundred thousand dollars and arranged with a local financial institution for the processing of the loan with the purpose of constructing the housing units.

8. Plaintiff filed an application for conditional use permit with the City of Lake Charles, Louisiana on June 15, 1990 to construct thirty-six (36) middle income housing units.

9. The Comprehensive Zoning Ordinance for the City of Lake Charles specify that an applicant's application should be denied or affirmed within fifteen (15) days. The City of Lake Charles, through its Department of Planning, did not comply with its own regulations in that it did not provide a response to plaintiff within that time period. Said inaction effectively gave tacit approval to plaintiff's application to construct the thirty-six (36) unit housing development.

10. Notwithstanding that the City of Lake Charles failed and/or refused to process his application for a conditional use permit within the fifteen (15) day period as required under the Comprehensive Zoning Ordinance

for the City of Lake Charles, the City of Lake Charles allowed a City Councilman, David Painter, to file an untimely objection to his application on July 17, 1990. Said application was not within fifteen (15) days of the mandated decision of the Director of Planning.

11. As a result of the untimely and unlawful appeal of City Councilman David Painter, petitioner's application was submitted to the Lake Charles Planning and Zoning Commission which should not have received it in the first place because of the untimeliness of Mr. Painter's appeal/objection.

12. On August 20, 1990, the Lake Charles Planning and Zoning Commission denied plaintiff's application to construct a multi-family duplex development.

13. On August 28, 1990, the City Council for the City of Lake Charles refused to grant a hearing on the appeal of Minor Conditional Use Permit No. 0434, plaintiff's application, which effectively affirmed the August 20, 1990 decision of the Lake Charles Planning and Zoning Commission. Plaintiff was notified by letter dated August 29, 1990 from the City of Lake Charles.

14. The City of Lake Charles, through its City Council of which David Painter was a member, the Mayor of Lake Charles, James E. Sudduth, and the Director of Planning and Development who operates under the direction of the Mayor and City Council, conspired to prevent plaintiff from being issued a permit to build rental housing units under Section 221(d)(4) of the Fair Housing Act. The deliberate action of the City of Lake Charles, its City Council, its Mayor, its Director of Planning and Development, and the Lake Charles Planning

and Zoning Commission caused plaintiff to lose his application to build thirty-six (36) units and subjected him to requirement different than those imposed on white applicants who applied for conditional use permits to build commercial structures within the City of Lake Charles.

15. Because the City of Lake Charles did not properly process plaintiff's application for conditional use permit within the required fifteen (15) day period, plaintiff was not able to secure HUD's guarantee of ninety (90%) percent of a two million, five hundred thousand dollar loan and additionally caused him damages in as yet undetermined amounts, which amounts will be proven at the trial of this cause.

16. The actions of the defendants were racial in nature in that the plaintiff, WILEY STEWART, was treated differently because of his race, a black American, and because his proposed development was perceived to become black populated in a predominantly white area of town. In fact, he was told that the Mayor and the white residents would oppose his project because of what they perceived to be a black-oriented development.

VI.

ADMINISTRATIVE COMPLIANCE

17. Plaintiff, WILEY STEWART, has complied with all administrative requirements under the Fair Housing Act and this suit is timely brought under the provision of the Fair Housing Act.

VII.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, WILEY STEWART, PRAYS that this Court:

I. Issue a declaratory judgment that the Defendants' acts, policies, practices and procedures complained of herein violated Plaintiff's rights under the Fair Housing Act, 42 USC §3600 *et seq.*;

II. Order injunctive relief prohibiting the defendant from engaging in acts, policies, practices and procedures which violate plaintiff's rights under the Fair Housing Act;

III. Order defendant to provide plaintiff with appropriate monetary relief and other benefits in amounts to be shown at the trial;

IV. Order defendants to institute a program of appropriate affirmative action to allow him to construct the multi-family middle income rental units which he applied for;

V. Grant to plaintiff punitive damages for the egregious violations of law committed;

VI. Grant the plaintiff his attorney's fees, court costs and expenses;

VII. Grant such other additional relief as the Court deems just and proper.

Respectfully submitted,

/s/ Wiley Stewart
WILEY STEWART,
IN PROPER PERSON
414 SOUTH GOOS STREET
LAKE CHARLES, LA 70601
PH: (318) 436-8388

APPENDIX 'G'

IN THE

UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

* * *

WILEY STEWART, Plaintiff, versus CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION AND JAMES E. SUDDUTH, MAYOR OF LAKE CHARLES, Defendants.	CIVIL ACTION NUMBER: **92-1591** JUDGE TRIMBLE MAGISTRATE WILSON

PLAINTIFF'S PRETRIAL STATEMENT

Counsel for Plaintiff submits the following Pretrial Statement to the Court and opposing counsel.

1. **JURISDICTION**:

Plaintiff, WILEY STEWART, SR., a native African-American of the State of Louisiana and of the United States, maintaining his place of residence at 414 South Goos Street in the City of Lake Charles, State of Louisiana 70601, desiring to develop medium-income housing in the certain metropolitan areas of the City of Lake Charles,

a municipal corporation created and organized under the laws of the State of Louisiana, brings this action for a declaratory judgment as to plaintiff's right to a preliminary and permanent injunction enjoining the defendants, CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, and JAMES E. SUDDUTH, Mayor of the City of Lake Charles (or his successor), from maintaining policies, practices and customs by which they engaged, and continue to engage, in proscribed patterns and practices of discrimination against plaintiff based on race.

Therefore, the jurisdiction of this Court is invoked by the plaintiff, WILEY STEWART, SR., a private person, under the provisions of the Fair Housing Act; and, particularly, 42 U.S.C. § 3613(a) and (c).

2. **ADDITIONAL PLEADINGS:**

At this time, the necessity of additional pleadings is not foreseeable.

3. **PENDING MOTIONS:**

None; and none are anticipated.

4. **BRIEF SUMMARY OF CASE:**

(a) Predicated on the Fair Housing Act (42 U.S.C. §§ 3601-3631), plaintiff, WILEY STEWART, SR., brings this action against defendants, CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, and JAMES E. SUDDUTH, Mayor of Lake Charles (and/or his successor).

(b) On June 15, 1990, the plaintiff applied to the defendant, CITY OF LAKE CHARLES, for a **Minor Conditional Use Permit,** suggesting the construction and development of thirty-six (36) medium-income housing units on a 5.17 acres tract of land, in a residential zone, between First and Second Avenues and Ninth and Tenth Streets of the City of Lake Charles, Louisiana; and adjacent to, abutting on, lying in close proximity, and/or situated between empirically designated "**white neighborhood.**"

(c) On June 18, 1990, plaintiff, likewise, applied for a **Minor Conditional Use Permit** to build, construct and/or develop six (6) additional medium-income housing units on another site so situated and empirically designated in the City of Lake Charles, Louisiana.

(d) Plaintiff, WILEY STEWART, SR., was hopeful, and enthusiastically optimistic, of obtaining financial assistance, or financial backing, in the nature of **guaranteed mortgage insurance** through (or from) Housing and Urban Development (HUD) for a loan in the amount of $2.5 million, thereabout (more or less), with a bona fide lending institution; and under the established guidelines of the Department of Housing and Urban Development (HUD).

(e) Plaintiff anticipated building, constructing and developing, overall, fifty (50) low- and medium-income rental housing units at an estimated cost of $2.5 million within the City Limits of the City of Lake Charles, Louisiana, where he sensed a consensus of a need for such rental housing units.

(f) In the City of Lake Charles, Louisiana, during the period of time relevant to this action, there had never been an African-American sponsor or developer of any medium income rental housing units. Plaintiff would have been the first African-American sponsor and/or developer of such units in the City of Lake Charles.

(g) Plaintiff's preliminary discussions with HUD were impeded and not allowed to materialize since the authority of the City of Lake Charles had a greater desire or had a greater susceptibility for maintaining empirical patterns and practices of housing segregation in satisfaction of, or rather, in favor of whimsical demonstrations staged by the disgruntled white communities of the City of Lake Charles struggling to maintain the last vestige in racial housing segregation which is proscribed by the Fair Housing Act, 42 U.S.C. §§ 3601-3631.

(h) In violation of the Fair Housing Act, the defendants denied plaintiff's Applications for Minor Conditional Use Permits, Number: 0434, dated and submitted June 15, 1990 (6-15-90), and Number: 0435, dated and submitted June 18, 1990 (6/18/90), copies of which are annexed and made a part hereof as if herein set forth at length.

(i) In effectuating race based discrimination against plaintiff, in violation of the Fair Housing Act, the defendants denied plaintiff procedural due process under the appropriate ordinances of the City of Lake Charles; and did not afford plaintiff equal protection of the laws as customarily accorded white applicants. Plaintiff was not treated the same; and plaintiff's applications were not processed and handled the same as the applications of

white applicants. There was disparity of treatments; and irregularities in processing and handling plaintiff's applications which are at variance with processing and handling the applications of white applicants so faced and of the same being and of the same similarity.

(j) The defendants' action in denying plaintiff's applications was a manipulation designed to perpetuate empirical customs, policies, patterns and practices of housing segregation by discriminating against plaintiff in violation of the Fair Housing Act; and by denying to him due process of law and equal protection of the laws accorded to him by the Fourteenth Amendment of the Constitution of the United States.

(k) The defendants, as the governing body, or rather, the governing authority, of the City of Lake Charles, Louisiana, in denying plaintiff's Applications for Minor Conditional Use Permits, acted wilfully, wantonly and/or intentionally against plaintiff, WILEY STEWART, SR., and in violation of the Fair Housing Act; and, therefore, defendants are answerable to plaintiff for damages, compensatory and punitive; and attorney's fees and costs under the provisions of 42 U.S.C. § 3612(p).

(l) Defendants, in cooperating with the neighborhoods' disgruntled white demonstrators against granting the Minor Conditional Use permits to the plaintiff, WILEY STEWART, SR., an African-American developer, wilfully, wantonly, and/or intentionally failed, or refused, to take cognizance of the **Declaration of Policy** of the Fair Housing Act as set forth in Section 3601 thereof; and, therefore, pretextually, denied plaintiff's

applications for Minor Conditional Use Permits in violation of the Fair Housing Act.

(m) Where the defendants denied plaintiff's applications to build, construct, and develop medium-income rental housing units on certain sites in areas deemed by the defendants to be a "**nice, quiet neighborhood,**" an ethnically-charged euphemistic phraseology inferring that a "**nice, quiet neighborhood**" is too good to be inhabited by minorities; or that minority inhabitants are undesirables and not good enough to live in a "**nice, quiet neighborhood**"; or that it is unthinkable that minorities should be permitted to racially mix and racially intergrate a "**nice, quiet neighborhood**"; or to live in and inhabit property sites in areas of the City of Lake Charles adjacent to, abutting, or in near proximity of sites and areas of the City of Lake Charles, Louisiana, empirically inhabited by members of the majority race – and because of that, by the governing authority of the City of Lake Charles, Louisiana – is deemed to be a "**nice quiet neighborhood,**" which, of course, is obnoxious and repugnant to the **Declaration of Policy** of the Fair Housing Act, 42 U.S.C. § 3601.

(n) Plaintiff, WILEY STEWART, SR., desires and is entitled to any and all relief statutorily authorized, or permissible; and for general and equitable relief which will foster and promote the purposes for the enactment of the Fair Housing Act.

5. **ISSUES OF FACT:**

(a) Did defendants, in denying plaintiff's applications for Minor Conditional Use Permits to build, construct, and develop medium-income rental units on sites situated in areas adjacent to, abutting upon and/or in close proximity of homeowners living in neighborhoods and areas of Lake Charles empirically deemed by the governing authority of the City of Lake Charles, or the defendants, to be **neighborhoods for whites only**, discriminated against plaintiff in violation of the Fair Housing Act?

(b) Whether the acts of articulation by the defendants for the defendants' denial of the plaintiff's application are pretextual, providing a canopy for the perpetuation of empirical customs, policies, patterns and practices of racial segregation in housing in the City of Lake Charles, Louisiana, in violation of the **Declaration of Policy** of the Fair Housing Act, 42 U.S.C. § 3601?

(c) Whether it is indicative in the euphemism "**nice, quiet neighborhood**," referenced by the defendants while drumming up grounds of pretextual articulations to deny plaintiff applications, that the defendants' denials were wilful, wanton and intentional; albeit, the defendants' acts of denial were disparate impact in violation of the Fair Housing Act devoid intent or not?

(d) The calculation of plaintiff's damages, attorney's fees, and costs.

(e) Any factual issue implicit in the pleadings and/or the hereinabove and foregoing summary of the case.

6. **ISSUES OF LAW:**

(a) Whether the acts of the defendants, in denying plaintiff's applications for Minor Conditional Use Permits to build, construct, and develop medium-income rental units in areas of the City of Lake Charles, Louisiana, are race-based discrimination to perpetuate racially segregated neighborhoods in the City of Lake Charles in violation of plaintiff's protected rights under the Fair Housing Act (42 U.S.C. §§ 3601-3631); and guaranteed to him by the Fourteenth Amendment of the Constitution of the United States?

(b) Whether it is a requirement under the Fair Housing Act, that in order for plaintiff to prevail in this action, it must be established by the proof of this case that the demonstrated acts of the defendants – which racially discriminated against plaintiff and culminated in the denial of Plaintiff's applications for Minor Conditional Use Permits by the defendants and the perpetuation of empirical customs, policies, patterns and practices of providing and maintaining racially segregated neighborhoods in areas of Lake Charles – were intentional?

(c) Whether the racially discriminatory action engaged in by the defendants in denying plaintiff's applications for Minor Conditional Use Permits, and perpetuated – and tends to perpetuate – empirical customs, policies, patterns and practices of racial segregation in housing in the City of Lake Charles, Louisiana, damaged plaintiff and violated his rights protected to him by the Fair Housing Act (42 U.S.C. §§ 3601-3631); and accorded to him by the Fourteenth Amendment of the United States?

(d) Any issue of law implicit in the pleadings and or any part of this pretrial statement.

7. **LIST OF WITNESSES:**

WILL CALL WITNESSES

01. JAMES SUDDUTH
Former Mayor of the City of Lake Charles
2025 20th Street
Lake Charles, Louisiana 70601

02. KENNETH SCHEXNIDER
2222 22th Street or 3305 South General Wainwright Drive
Lake Charles, Louisiana 70601

03. DENNIS C. WARE
1520 Jackson Street
Lake Charles, Louisiana 70601

04. FAYE BROWN BLACKWELL
2321 Elaine Street
Lake Charles, Louisiana 70601

05. DAVID PAINTER
c/o City of Lake Charles
326 Pujo Street
Lake Charles, Louisiana 70601

06. C. E. "CHUCK" MacPHERSON
3411 Lake
Lake Charles, Louisiana 70601

07. FRANK Y. PRYCE
331 Enterprise Boulevard
Lake Charles, Louisiana 70601

08. ERNIE BROUSSARD
c/o City of Lake Charles
326 Pujo Street
Lake Charles, Louisiana 70601

09. WESLEY W. CRAIN
c/o City of Lake Charles
326 Pujo Street
Lake Charles, Louisiana 70601

10. D. W. JESSEN, JR. C.E.
Civil & Consulting Engineers
440 Kirby Street
Lake Charles, Louisiana 70601

11. CHARLES LeDOUX
c/o City of Lake Charles
326 Pujo Street
Lake Charles, Louisiana 70601

12. EMERSON PETE
c/o City of Lake Charles
326 Pujo Street
Lake Charles, Louisiana 70601

13. J. P. DONOVAN
c/o City of Lake Charles
326 Pujo Street
Lake Charles, Louisiana 70601

14. JOSE PAGAN
c/o Department of Housing and Urban Development (HUD)
1661 Canal Street, 3rd Floor
New Orleans, Louisiana 70112

15. RICHARD PIERCE
c/o Department of Housing and Urban Development (HUD)
1661 Canal Street, 3rd Floor
New Orleans, Louisiana 70112

16. GREG WEBB
c/o Calcasieu Marine National Bank
1300 Ruth Street
Sulphur, Louisiana 70663

17. WYNETTA MARIE STEWART
414 South Goos Street
Lake Charles, Louisiana 70601

18. WILEY STEWART, SR., Plaintiff
414 South Goos Street
Lake Charles, Louisiana 70601

19. DR. KENNETH EUGENE LEHRER
Consulting Economist
Lehrer Financial and Economic Advisory Services
5555 Del Monte Drive Suite 802
Houston, Texas 77056-4106

20. CLARECE REYNOLDS-BELL
HUD/Department of Justice
c/o the Director
Fair Housing Enforcement Division
1600 Throckmorton – Box 2905
Forth Worth, Texas 76113-2905

21. DON KINGERY
1323 10th Street
Lake Charles, Louisiana 70601

22. JULIAN H. DONDIS
1027 Ninth Street
Lake Charles, Louisiana 70601

23. ROBERT SPENCER, Commander
W. B. Williamson Post No. 1
The American Legion
1530 Ninth Street or 1718 9th Avenue
Lake Charles, Louisiana 70601

24. JAMES L. HOFFPAUIR
709 West School Street
Lake Charles, Louisiana 70605

25. CARRIE W. DIAZ
1904 Katherine Street
Lake Charles, Louisiana 70601

26. S. MARK McMURRY, Parish Administrator
204 West Elizabeth Street or 1300 Laurel Street
Sulphur, Louisiana 70663

27. W. H. "Buddy" PREJEAN
4400 Kirkman Street
Lake Charles, Louisiana 70605

MAY CALL WITNESSES

01. ERNIE LADD
c/o Joy A. Gray & Sharpers, Inc.
3467 Ontario Street
Baton Rouge, Louisiana 70805
Telephone: 504/355-8078

8. **LIST OF EXHIBITS:**

EXHIBITS

01. Transcription of Portion of City Council Agenda Meeting of August 28, 1990

02. Letter of August 29, 1990, to Wiley Stewart, from the City of Lake Charles, Department of Planning and Development, signed by Wesley Crain, Planner II

03. Application For Conditional Use Permit City of Lake Charles, Louisiana, No. 0435, dated 6/18/90

04. Resolution No. 135-90, Passed and Adopted at Lake Charles, Louisiana, the 17th day of October, 1990

05. Application For Conditional Use Permit City of Lake Charles, Louisiana, No. 0434, dated 6/15/90

06. Letter of June 21, 1990, from David Painter, to Ernie Broussard, Planning Department, City Hall, written on the Letterhead Stationery of David Painter, Attorney at Law

07. MEMORANDUM to James E. Sudduth, et al., from Michael McCauley, Planner II, dated July 25, 1990, Subject: Staff Findings

08. MEMORANDUM to James E. Sudduth, Mayor, for Wiley Stewart, Sr., Applicant, dated July 23, 1990, from Michael McCauley, Planner II, Re: Minor Conditional Use Permit No. 0435

09. Tapes (I and III), of the Meeting of August 20, 1990, Lake Charles Planning and Zoning Commission (Copies of the Tapes)

10. Minutes of Meeting – Lake Charles Planning & Zoning Commission – August 20, 1990 – 5:30 PM City Council Chambers

11. MEMORANDUM to Ernie Broussard, Director, Office of City Planning – OFFICE OF THE ADMINISTRATOR – from S. Mark McMurry, Parish Administrator, dated September 18, 1990, with attached communications referencing the Honorable J. Bennett

Johnson, United States Senator, together with a diagram face of the of that portion of the City of Lake Charles encompassing a two-block surrounding area of the proposal construction site including an attachment of what purports to be a Homeowners Petition

12. Letter of August 13, 1990, from Robert L. Spencer, Commander, W. S. Williamson Post 1, The American, to Lake Charles Planning and Zoning Commission, with an attached Petition

13. Letter of August 21, 1990, from Wiley Stewart, Sr., to Mayor James Sudduth, et al.

14. Site Plan of the proposal 36 units, which Plaintiff say was drafted by James L. Hoffpauir, Architect

15. Letter of July 13, 1990 from J. P. Donovan, Waste Water Superintendent, to Wesley W. Crain, Planning Department, Lake Charles, Louisiana

16. Letter of July 11, 1990, from Wesley W. Crain, Planner II, to Pat Donovan,Waste Water, Lake Charles, Louisiana

17. Letter of June 19, 1990, from Wesley W. Crain, Planner II, to Walter Jessen, Jr., City Engineer, Lake Charles, Louisiana

18. Letter of June 20, 1990, from D. W. Jessen, Jr., C.E., D. W. Jessen & Associates, Civil & Consulting Engineers, to Wesley W. Crain, Planner II, Department of Planning & Development, City of Lake Charles, Louisiana

19. Letter of June 25, 1990, from Wesley W. Crain, Planner II, to Charlie LeDoux, Greater Lake Charles Water Company, Lake Charles, Louisiana

20. MEMORANDUM to James Sudduth, Mayor, et al., for Wiley Stewart, Sr., Applicant, dated July 11, 1990, from Wesley W. Crain, Planner II, Re: Minor Conditional Use Permit No. 0435

21. Letter dated July 17, 1990, from David Painter, Office of the City Council, to James Sudduth, Mayor, et al., Re: Minor Conditional Use Permit No. 0435

22. An **unsigned** letter dated June 25, 1990, Re: **PROPOSED NEW CONSTRUCTION OF APARTMENT COMPLEX BETWEEN 1ST & 2ND AVENUE AND 9TH AND 10TH STREETS,** with inscription ("Prepared letter drafted by P.2. For Appl. sig. at his request. Changed again; never signed") penciled in longhand.

23. Letter dated June 17, 1990, from W. H. "Buddy" Prejean, Councilman, to Wesley W. Crain, Planning Department

24. MEMORANDUM to Mayor James Sudduth/City Council Members, from Ernest Broussard, Jr., Director of Planning and Development, dated August 22, 1990, SUBJECT: Appeal of Planning Commission Decision Regarding # 90-17 by Wiley Stewart

25. Letter dated June 21, 1990, written by David Painter, on his Attorneys' Letterhead, addressed to Ernie Broussard,

Planning Department, City Hall; and having penciled at the bottom thereof: "WES-Hold All Final Approvals until the matter is Fully Discussed w/ David & Chuck-*Ernie*"

26. Letter of July 17, 1990, by David Painter, to James Sudduth, Mayor, et al. "* APPEAL REQUEST FROM DAVID PAINTER," appearing written in pencil in the upper right-hand corner thereof; and in the lower right-hand corner thereof there is a penciling reading "7-20-90 Mayor Sudduth, for your info. Scheduled for *August* Planning Commission Mtg. ___"

27. Letter of July 25, 1990, on letterheading of the Office of the City Council, from David Painter, to James Sudduth, Mayor, Re: Minor Conditional Use Permit NO. 0435

28. Letter of August 27, 1990, on letterheading of the City of Lake Charles, by Wesley W. Crain, Planner II, Department of Planning and Development, Re: Minor Conditional Use Permit No. 0435

29. Document Control Cover Sheet, Case No. 06-91-0077-1, Case Name: STEWART v. CITY OF LAKE CHARLES, appearing to have been signed by: Clarece Reynolds-Bell, Investigator, with an annexation of an INVESTIGATOR's MEMO TO FILE, SUMMARY OF REVIEW, 06-26-91 and 06-27-91

30. CASE FILE NO: 06-0077-1, CASE NAME: WILEY STEWART, SR., vs. CITY OF LAKE CHARLES, consisting of eight pages with the last signature of the last page being that of John E. Wright, Director, Office of Fair

Housing and Equal Opportunity, dated 9/30/91

31. Expert Witness's Report and/or Deposition of: DR KENNETH EUGENE LEHRER CONSULTING ECONOMIST LEHRER FINANCIAL AND ECONOMIC ADVISORY SERVICES 5555 DEL MONTE DRIVE SUITE 802 HOUSTON TEXAS 77056-4106

32. Letter of November 25, 1991, on letterheading of U. S. Department of Housing and Urban Development, over the signature of Harry L. Carey, Assistant General Counsel for Fair Housing, addressed to Wiley Stewart, Sr., with annexation of a letter on the letterheading of U. S. Department of Justice, Civil Right Division, dated January 23, 1992, addressed to Wiley Stewart, Sr., Re: City of Lake Charles, LA, Zoning Referral HUD Case File No. 06-91-0077-1, signed by: Myron S. Lentman, Attorney, Housing and Civil Enforcement Section

33. CODE OF ORDINANCES of the City of LAKE CHARLES, LOUISIANA – APPENDIX A-ZONING

34. Letter of August 22, 1990, on letterheading of the Office of the Mayor, by Ernest Broussard, Jr., Director of Planning & Development, addressed to Wiley Stewart

35. MEMORANDUM, dated July 12, 1990, to Ernest Broussard, Jr., Director of Planning & Development Department, from Wesley W. Crain, Planner II, SUBJECT: **APARTMENT COMPLEX DEVELOPMENT 1ST AND 2ND AVENUES AT 9TH AND 10TH STREETS**

36. Letter of August 2, 1990, on letterheading of CITY OF LAKE CHARLES, to Applicant, signed by Wesley W. Crain, Planner II, with a NOTICE OF PUBLIC HEARING AND STAFF FINDING LAKE CHARLES PLANNING AND ZONING COMMISSION, dated AUGUST 20, 1990 – 5:30 P.M., attached

37. Letter of November 12, 1990, on Letterheading of CITY OF LAKE CHARLES, addressed to John E. Eubanks, Director Fair Housing Enforcement Division, SUBJECT: Complaint/Case Number 06-91-0077-1 Wiley Stewart, Sr., VS. City of Lake Charles, signed by Ernest Broussard, Jr., City Planner Director of Planning and Development, MEMORANDUM dated August 9, 1990, to James E. Sudduth, Mayor, et al., from Ernest Broussard, Jr., City Planner Department of Planning Commission, SUBJECT: **36-UNIT APARTMENT PROPOSAL BY WILEY STEWART**

38. HOUSING DISCRIMINATION COMPLAINT signed by Wiley Stewart, Sr., 6/27/91

39. Document Control Cover Sheet, Case Number: 06-91-0077-1, Case Name: STEWART v. CITY OF LAKE CHARLES, Description of Document: Guidelines for Application (attached), Received by CLARECE REYNOLDS-BELL

40. Document Control Cover Sheet, Case Number: 06-91-077-1 Case Name: Wiley Stewart v. City of Lake Charles, Interviewer: EOS Clarece Reynolds-Bell, Description of Document: "Mover to File

Telephone Conversation w/CP on 06/21/91" as attached.

41. What appears to be a reduced copy of a Map of the City Lake Charles.

42. Any and all Reports of any and all exports and depositions which may be retained by any of the Parties.

9. **DEPOSITIONS:**

The following depositions **may be offered in whole,** viz:

(a) Deposition of plaintiff, WILEY STEWART, SR., taken February 24, 1993

(b) Deposition of Jose Pagan, taken January 24, 1994

(c) Deposition of Richard V. Pierce, taken January 24, 1994

(d) Deposition of Dr. Kenneth Lehrer, taken January 26, 1994

(e) Deposition of Greg Webb, taken January 18, 1994.

10. **STIPULATIONS:**

None at this time; and none anticipated.

11. **PROBABLE LENGTH OF TRIAL:**

It will, likely, take five (5) to seven (7) days to try this case.

12. **OTHER MATTERS:**

None at this time; and none anticipated.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF:

JONES & JONES

DATED: October 7, 1994

/s/ Johnnie A. Jones

JOHNNIE A JONES
(Bar No. 8329)
JONES & JONES
ATTORNEY AT LAW
STATE NATIONAL
LIFE BUILDING
263 THIRD STREET SUITE 702
BATON ROUGE LOUISIANA
70801-1703
TELEPHONE: 504/383-8573

APPENDIX 'H'

Code of Ordinances

OF THE CITY OF LAKE CHARLES, LOUISIANA

APPENDIX A-ZONING

APPENDIX A

ZONING*

---

* **Editor's note** – Ordinance No. 7717, passed and adopted Sept. 21, 1983, expressly repealed the comprehensive zoning law of the city, included herein as former App. A, and enacted in lieu thereof new zoning regulations as herein set out. Said Ord. No. 7717 is incorporated herein as enacted including article designations, parts, catchlines and the numbering system. Only minor, nonsubstantive additions and deletions have been made by the editor for the sake of clarity and consistency. Absence of a history note following a particular section in App. A indicates that the section derives unchanged from Ord. No. 7717; conversely, a history note enclosed in parentheses following a particular section indicates that the section has been amended by the ordinance or ordinances included in such history note.

Art. I. Title, Purpose and Applicability, §§ 1-101 – 1-106

Art. II. Definitions and Rules of Interpretation, §§ 2-101, 2-102

Art. III. Land Use Policies

Part 1. [Generally], §§ 3-101, 3-102

Part 2. Comprehensive Land Use Development, § 3-201

Appendix A was formerly derived from the following legislation:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
4526	–	4-19-72	5350	1-11	11-5-75
4577	1, 2	6-21-72	5388	1	12-17-75
4620	1-3	8-22-72	5389	1-7	12-17-75
4640	1	9-20-72	5656	1-11	12-28-76
4939	1	3-20-74	5788	1-5	6-15-77
5158	1	3-19-75	6244	1, 2	2-21-79
5224	1-8	5-27-75	6650	1	7-16-80
5340	1, 2	10-15-75	6742	1	10-15-80

Cross references – Building, construction and occupancy codes and regulations, Ch. 6; fire protection and prevention, Ch. 8; planning, Ch. 17; streets and sidewalks, Ch. 18; utilities, Ch. 21.

State law references – For state law as to municipal zoning regulations, see R.S. 33:4721 et seq.; as to municipal planning, see R.S. 33:101 et seq.

Part 3. Transportation, § 3-301

Part 4. Public Facilities and Services, § 3-401

Part 5. Economic Development, § 3-501

Part 6. Planning and Coordination, § 3-601

Part 7. Housing, § 3-701

Part 8. Environmental Quality, § 3-801

Art. IV. Administration of Development Standards

Part 1. Decision-Making and Administrative Bodies, §§ 4-101 – 4-103

Part 2. Development Review, §§ 4-201 – 4-207

Art. V. Development Regulations

Part 1. Zoning Districts and Map, §§ 5-101, 5-102

Part 2. Regulations of General Applicability, §§ 5-201 – 5-211

Part 3. District Regulations, §§ 5-301 – 5-307

Part 4. Planned Development, §§ 5-401 – 5-421

Art. VI. Enforcement, §§ 6-101, 6-102

Art. VII. Fees, § 7-101

Appendix A. Application for Development Approval

Appendix B. Roadway Classifications

Appendix C. Reserved

Appendix D. Fee Schedule

AN ORDINANCE adopting a comprehensive zoning ordinance of the City of Lake Charles, Louisiana, providing for the application thereof to existing properties and land uses; providing for definitions and rules of interpretation; providing for land use and development policies, goals and objectives; providing for the administration of said ordinance through a planning and zoning commission, a board of zoning adjustment, and the planning office of the City of Lake Charles, and defining the powers and duties of said offices of bodies; providing for development review, variances and special exceptions, providing for amendments to zoning districts, creating zoning districts and providing for zoning maps; providing for development and use regulation for each district; creating a Charpentier District, providing for historic landmarks, and providing for supplemental rules and regulations with regard thereto; providing for planned residential, commercial, industrial, mixed and mobile home developments; prohibiting the violation of [and providing for the enforcement of this ordinance; providing for amendments thereto;] and providing for the repeal of comprehensive zoning law of the City of Lake Charles being Ordinance No. 4526 of the City of Lake Charles, Louisiana, as amended and by otherwise providing with respect thereto.

WHEREAS, the City of Lake Charles wishes to promote the health, safety and morals of the general welfare of the City of Lake Charles;

WHEREAS, the City of Lake Charles deems it necessary to enact a zoning ordinance of the City of Lake Charles, Louisiana, for the purpose of regulating and restricting the height, number of stories, and the size of

structures, the percentage of lots that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence and other purposes;

WHEREAS, the City of Lake Charles, Louisiana, has determined that the goals and objectives set forth above are best served by dividing the City of Lake Charles into districts of such number, shape and area as set forth herein in order to carry out the purposes and goals set forth above.

NOW THEREFORE BE ORDAINED by the City Council of the City of Lake Charles, Louisiana, in regular session convened that: Section 1, Appendix A to the Lake Charles Code of Ordinances is hereby amended by enacting the zoning ordinance of the City of Lake Charles, Louisiana, said ordinance to read as follows:

ARTICLE 1. TITLE, PURPOSE AND APPLICABILITY

Sec. 1-101. Title.

This ordinance shall be known as the Zoning Ordinance of the City of Lake Charles, Louisiana.

Sec. 1-102. Authority and purpose.

This ordinance is adopted pursuant to the Charter of the City of Lake Charles, the provisions of Section 33:4721 et seq., Section 33:101 et seq., and Section 25:731 et seq. of the Louisiana statutes and the Constitution of the State of Louisiana in order to promote the public health, safety, morals and general welfare of the City of Lake Charles.

Sec. 1-103. Applicability.

(1) *General application.* This ordinance shall apply to the use of all land within the corporate limits of the City of Lake Charles. All development in the city shall meet the minimum standards and requirements of this ordinance, as amended from time to time.

(2) *Effective regulations.* Decisions in regard to applications for development approval shall be based on the provisions of this ordinance in effect at the time of the decision.

(3) *Building permits issued prior to effective date.* This ordinance, or any amendment thereto, shall not affect the validity of any building permit lawfully issued prior to the effective date of the ordinance, or any amendment thereto, provided that the permit is valid upon the effective date of the adoption of this ordinance or any amendment thereto, that construction authorized by such permit has commenced prior to the effective date of the ordinance, or any amendment thereto, and provided that construction has and does continue without interruption until development is completed.

(4) *Conditional uses lawful prior to effective date.* Any use established on the effective date of this ordinance and which conforms with the conditional use provisions applicable in the zoning district in which the use is located shall be considered a lawful conditional use; provided, that the use continues to conform with the provisions of this ordinance.

Sec. 1-104. Repeal.

The Comprehensive Zoning Law of the City of Lake Charles adopted 1972 as Ordinance No. 4526, as amended from time to time, is hereby repealed.

Sec. 1-105. Severability.

If any provision of this ordinance shall, for any reason, be held to be invalid by a court of competent jurisdiction such invalidity shall not affect the validity of the remaining portions of the ordinance which shall continue in full force and effect.

Sec. 1-106. Effective date.

This ordinance shall become effective on January 1, 1984.

* * *

(3) Use land unsuitable for urban development for recreational use.

(4) Require new developments to comply with air and water quality standards.

(5) Minimize adverse environmental impacts resulting from municipal services and facilities.

ARTICLE IV. ADMINISTRATION OF DEVELOPMENT STANDARDS

PART 1. DECISION-MAKING AND ADMINISTRATIVE BODIES

Sec. 4-101. Planning commission.

(1) *Membership.*

(a) The commission shall be composed of five (5) regular members and two (2) alternate members to be appointed by the mayor with the approval of city council.

(b) Those members in office upon adoption of this ordinance shall serve until completion of their term.

(c) Each member shall serve a term of four (4) years.

(d) Each member of the commission shall be a resident of the City of Lake Charles and to the extent practicable, the membership shall represent diverse economic, social, business and geographic backgrounds.

(e) If a vacancy occurs prior to the expiration of a member's term, the mayor shall appoint a member for the duration of the unexpired term within sixty (60) days of the vacancy.

(f) The members of the commission shall serve without compensation and shall hold no other public office other than as members of a regional planning commission of which the City of Lake Charles is a member or constituent part.

(g) A member of the commission may be removed from office by the mayor for inefficiency, neglect of duty, or malfeasance in office. Failure to

attend three (3) out of five (5) consecutive commission meetings shall constitute adequate grounds for removal.

(2) *Chairman and vice-chairman.*

(a) At the first regular meeting of each year, the members of the commission shall elect one of their number as chairman and one of their number as vice-chairman.

(b) No member may serve more than two (2) consecutive terms as chairman.

(c) In the absence of the chairman, the vice-chairman shall act as chairman and shall have all the powers of the chairman.

(d) The members of the commission shall, in the event both the chairman and vice-chairman are absent from a meeting, select a member to preside over the meeting.

(e) The chairman shall preside over all meetings of the commission and, in addition, may appoint committees, composed of members of the commission, as well as other persons, to serve the commission as he deems necessary.

(f) The chairman may engage in discussion and vote in the same manner as any other member of the commission.

(g) The chairman may suggest motions but may neither make or second motions.

(3) *Secretary.*

(a) The director of planning, or his designated representative, shall serve as secretary to the commission.

(b) The secretary shall keep the minutes of all meetings of the commission and maintain the record for each commission meeting, hearing or other proceeding.

(4) *Quorum and necessary vote.* No business shall be transacted by the commission without a quorum which shall consist of at least four (4) members of the commission being present. The concurring vote of at least three (3) members shall be necessary for the commission to take any action.

(5) *Procedures.*

(a) The commission shall hold regular monthly meetings. Special meetings may be called by the chairman, or at the written request of any two (2) members of the commission.

(b) All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedures established in Section 4-201 of this ordinance, and any rules of procedure adopted by the commission in accordance with subsection (6)(k) of this section.

(c) Any rules of procedure shall be kept on file by the commission and be available to the public at all times and copies thereof shall be available at any meeting or hearing.

(d) In the event that less than a quorum is present at any meeting of the commission, the meeting shall be rescheduled by the director of planning to a date certain as soon as practical. The secretary shall notify, in writing, all members of the commission, the applicant and all other interested persons of the date of the rescheduled meeting.

(e) Prior to voting on any matter, each member shall review the entire record of the proceeding and fully inform himself of the facts and issues of the matter under consideration. If a member was absent during a public hearing conducted to consider a matter, he shall state on the record that he has complied with the provision prior to voting on the matter.

(f) Meetings to consider matters relating to zoning shall be held separately by the commission.

(6) *Powers and duties.* The commission shall have the following powers and duties:

(a) To prepare and adopt a comprehensive plan or elements thereof;

(b) To annually review and update the comprehensive plan or elements thereof;

(c) To review the capital improvement programs of the city for compliance with the comprehensive plan, or any element thereof, to comment thereon, and recommend to the city council approval or disapproval of proposed public projects;

(d) To prepare and revise as appropriate the official zoning district map, and recommend its adoption, and from time to time to recommend its amendment, as provided in Sections 4-207 and 5-102 of this ordinance;

(e) To hear, review and make recommendations to the city council on proposed zoning district classifications for land subject to a petition for annexation;

(f) To hear, review and approve, or disapprove applications for conditional use permits as provided in Section 4-203 of this ordinance;

(g) To initiate, hear, review and make recommendations to the city council on proposed amendments to the text of this ordinance as provided in Section 4-207 of this ordinance;

(h) To serve as the historic preservation commission and to initiate, hear, review and make recommendations to the city council on applications for designation of historic districts or historic landmarks as provided in Section 5-307 of this ordinance;

(i) To develop guidelines for use by the public to govern the development and redevelopment of historic structures;

(j) To review and report on any matter referred to it by the mayor or the city council;

(k) To adopt rules of procedures which are not in conflict with the provisions of this ordinance.

Sec. 4-102. Board of zoning adjustment.

(1) *Membership; appointment, terms, vacancies, qualifications and removal.*

(a) The board shall be composed of five (5) regular members and two (2) alternate members to be appointed by the mayor. Alternate members shall serve only when called upon to form a quorum; however, when so serving such members shall have all the powers and duties of regular members.

(b) Each regular member shall serve a term of five (5) years and each alternate member shall serve

a term of three (3) years. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant within sixty (60) days of the vacancy.

(c) Each member shall be a qualified voter in the City of Lake Charles and to the extent practicable, the membership shall represent diverse economic, social, business and geographic backgrounds.

(d) Any member may be removed from office for cause by the mayor and city council upon written charges and after a public hearing. Failure to attend three (3) out of five (5) consecutive board meetings shall constitute cause for removal.

(2) *Chairman and vice-chairman.*

(a) At the first regular meeting in January of each year, the members of the board shall elect one of their number as chairman and one of their number as vice-chairman.

(b) No member may serve more than two (2) consecutive terms as chairman.

(c) In the absence of the chairman, the vice-chairman shall act as chairman and shall have all the powers of the chairman.

(d) The members of the board shall, in the event both the chairman and vice-chairman are absent from a meeting, elect a member to preside over the meeting.

(e) The chairman may administer oaths and compel the attendance of witnesses.

(f) The chairman may appoint any committees to serve the board as he deems necessary.

(g) The chairman may engage in discussion and voting as any other member of the board.

(3) *Secretary.*

(a) The director of planning, or his designated representative, shall serve as the secretary to the board.

(b) The secretary shall keep the minutes of the proceedings of the board and maintain all records of board meetings, hearings, and other proceedings.

(4) *Quorum and necessary vote.* No business shall be transacted by the board without a quorum, consisting of at least four (4) members. The concurring vote of at least three (3) members shall be necessary for the board to take any action.

(5) *Meetings, hearings and procedures.*

(a) Regular meetings shall be held monthly. Special meetings may be called by the chairman or at the written request of a majority of the regular members of the board.

(b) All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedures set forth in Section 4-201 of this ordinance and rules of procedures adopted by the board in accordance with this section.

(c) Any rules of procedure adopted by the board shall be kept on file by the board and available to the public at any public meeting or hearing.

(d) In the event that less than a quorum is present at any meeting of the board, the meeting shall be rescheduled by the director of planning to a date certain as soon as practical. The secretary shall

notify in writing all members, applicants and other interested persons of the date of the rescheduled meeting.

(e) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact and shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the board and shall be public records.

(f) All testimony, objections thereto, and rulings thereon, shall be taken down by a reporter employed by the board for that purpose.

(g) Each member shall review the entire record of the proceeding prior to voting and fully inform himself of the facts and issues of the matter under consideration. If a member was absent during a public hearing conducted to consider a matter, he shall state for the record that he has complied with this provision prior to voting on the matter.

(6) *Powers and duties.* The board shall have the following powers and duties:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an official in the administration or enforcement of this ordinance, as provided in Section 4-204 of this ordinance;

(b) To vary or modify, upon appeal, the application of the provisions of this ordinance, as provided in Section 4-205 of this ordinance;

(c) To hear, review and authorize special exceptions to this ordinance, as provided in Section 4-206 of this ordinance;

(d) To adopt rules of procedure which are not in conflict with the provisions of this ordinance.

Sec. 4-103. Department of planning.

(1) *Appointment and authority of director.* The director of the department of planning shall be appointed by the mayor and shall have the following powers and duties:

(a) To receive and review, or cause to have reviewed, applications for development approval;

(b) To issue conditional use permits pursuant to the provisions of Section 4-203(4) of this ordinance;

(c) To perform such duties as may be required by this ordinance or the planning commission and board of zoning adjustment.

(d) To be responsible for drafting of the city's comprehensive plan or any element thereof;

(e) To maintain the official zoning district map;

(f) To be responsible for the administration of this ordinance and the city's subdivision regulations;

(g) To issue zoning certificates and render interpretations of this ordinance as provided in Section 4-202 of this ordinance; and

(h) To enforce the provisions of this ordinance as provided in Article VI of this ordinance.

PART 2. DEVELOPMENT REVIEW

Sec. 4-201. Procedures of general applicability.

(1) *Preapplication conference.*

(a) *Request and scheduling.* An applicant for development approval is encouraged to request at his option an informal conference with the director of planning prior to filing an application for development approval.

(b) *Purpose of conference.* The preapplication conference shall be informal and its purpose shall be to discuss the proposals, views and concerns of the applicant, to determine whether any of the application requirements should be waived or any additional information will be required.

(c) *Letter of understanding.* Within ten (10) days after the preapplication conference, the director of planning shall transmit a letter of understanding to the applicant setting forth the substance of the preapplication conference. No representation by the director of planning or any other city official or employee at the preapplication conference or at any other time shall be binding on the city with respect to any application subsequently submitted unless such representation is set forth in the letter of understanding or in a zoning certificate.

(2) *Application submission requirements.* All applications for development approval shall be submitted to the director of planning at the offices of the planning department and contain the information required by the form set out in Appendix A. Applicants for development approval may be required to submit additional information, other than that required in appendix A, which the

director of planning or the decision-making body may deem necessary to review the proposed development.

(3) *Determination of completeness of application.*

(a) *Determination by director of planning.* Within fifteen (15) days after receipt of an application for development approval, the director of planning shall determine whether the application is complete, he shall notify the applicant in writing that the application has been accepted for filing. If he determines that the application is not complete, he shall notify the applicant, specifying the deficiencies of the application, including any additional information which must be supplied and no further action shall be taken by the city on the application until the deficiencies are corrected.

(b) *Remedy of Deficiencies.* If the applicant fails to correct the specified deficiencies within thirty (30) days of the notification of deficiency, the application for development approval shall be deemed withdrawn.

(c) *Effect of determination.* The time limits for completion of development review set out in this ordinance shall commence on the date that the director of planning determines that the applicant is complete.

(4) *Hearing procedures.*

(a) *Applicability.* The procedures set out in this subsection shall be applicable to all public hearings required by any provision of this ordinance.

(b) *Notice of public hearing.*

(1) Content. All notices of public hearings shall include:

(aa) The date, time and place of the hearings;

(bb) The section or sections of this ordinance under which the subject matter of the hearing will be considered;

(cc) The name of the applicant;

(dd) A brief description of the location of any land proposed for development and the subject matter to be considered at the hearing.

(ee) A statement that the application and supporting materials are available for public inspection and copying at the offices of the planning department; and

(ff) A statement that any person may speak or submit a written statement.

(ii) City [director of planning] to provide notice.

(aa) Notice of public hearings shall be given by the director of planning as follows:

(A) By sending a copy of the notice to the applicant by mail;

(B) By sending a copy of the notice, by mail, to any person, organization or agency which has previously filed with the city a written request for notices and paid an annual fee in an amount to be determined from time to time by the city to cover the

actual cost of providing such notices;

(C) By publication of a copy of the notice, once a week for three (3) different weeks, in a newspaper with general circulation in the city;

(D) By sending a copy of the notice by certified mail to each owner of record, if different from the applicant, of any land on which development is proposed;

(E) By sending a copy of the notice by regular mail addressed to the street address of improved property and the tax address of unimproved property located within five hundred (500) feet of any border of property proposed for development of major conditional use or property subject to a proposed amendment to the official zoning map.

(bb) Notice of approval of minor conditional use permits under Section 4-203(4) shall be given within seven (7) days of such approval to the city council and any other individual, organization or agency which has previously filed with the city a written request for notices and paid an annual fee in an amount to be determined from time to time by the city to cover the actual cost of providing such notice.

(cc) In addition to the contents set forth in paragraph (i) of this subsection, each notice of public hearing which is given by mail shall include a graphic description of the location of any land proposed for development, at an appropriate scale.

(iii) City to provide notice. The city shall provide notice of a required public hearing by conspicuous posting of a weatherproof sign at least two (2) square feet in front surface area on any roadway frontage of the parcel proposed for development.

(iv) Time of notice. All required notices shall be provided at least fifteen (15) days in advance of a public hearing.

(c) *Examination and copying of application and other documents.* Any person may examine any application for development approval and other material submitted in regard to that application, and may obtain copies of the application and other materials upon reasonable request and payment of a fee to cover the actual cost of such copies.

(d) *Conduct of the hearing.*

(i) Submission of information. Any person may appear at a public hearing and give a testimony or submit written materials, either individually or as a representative of an organization. The decision-making body may exclude information that it finds to be irrelevant, immaterial or unduly repetitious.

(ii) Duty of planning department.

(aa) Presentation of information. The planning department shall present information concerning pertinent application considerations and the standards set out in this ordinance.

(bb) Production of additional information. Upon a showing by any person made at any time during the hearing, or on motion of the decision-making body, the applicant or the staff may be required to produce additional information with respect to the proposed application.

(iii) Continuance. The decision-making body may continue a hearing to a specified date, time and place. Unless such continuance is publicly announced at a properly noticed public hearing, the director of planning shall cause notice to be given to all person originally entitled to notice of the date, time and place of such continued hearing in the same manner as specified in Section 4-201(4)(b) hereof.

(iv) Record of hearing.

(aa) The director of planning shall ensure that the proceedings are recorded by appropriate means. If a sound recording is made, any person shall be entitled to listen to the recording at any reasonable time or to make copies at his own expense.

(bb) The record of proceedings shall consist of the recording of testimony, all applications, exhibits and papers submitted in any proceeding with

respect to the matter being considered, and the summary and report or reports of the director of planning.

(cc) All summaries and reports of the director of planning shall be public records, open to inspection at a reasonable time and upon reasonable notice.

(v) Conflicts. Any member of a decision-making body having any direct or indirect financial interest in property or who lives within five hundred (500) feet of any property which is the subject of a public hearing shall disclose such fact at the hearing prior to voting on the matter.

(vi) Other rules to govern. Other matters pertaining to the public hearing shall be governed by other provisions of this ordinance applicable to the body conducting the hearing and its adopted rules of procedure.

(vii) Contracts outside of the hearing. If any member of a decision-making body receives a substantive communication from any person outside the hearing concerning a subject matter under consideration by that body, he shall make a statement at the hearing describing the circumstances and substance of such communication.

(5) *Waiver of time limits.*

(a) *By agreement.* Any time limit imposed by this ordinance may be waived or extended by agreement of the director of planning, the commission, the board or the city council, as the case may be, and the applicant.

(b) *Automatic waiver.* Any applicant who requests a continuance of a public hearing at which his application is being considered, or who requests an extension of any time limit imposed on him by statute or this ordinance, shall be deemed to have agreed to an extension of that time limit.

(6) *Action by decision-making body.*

(a) *General.* Except as otherwise provided herein, the decision-making body shall render its decision within fifteen (15) days after the close of the public hearing on the matter.

(b) *Findings.* All decisions of any decision-making body shall be in writing and shall include at least the following:

(i) Findings relevant to the standards governing the application for development approval under consideration;

(ii) Conclusions regarding each standard applicable to the proposed development; and

(iii) A recommendation or final decision.

(c) *Notification.* Notification of all decisions shall be mailed to all persons entitled to notice under Section 4-201(4)(b)(ii).

(7) *Successive applications.* Whenever any application for development approval is denied, an application involving the same property shall not be accepted for filing within one year from the date of denial, unless the subsequent application involves a development proposal which is materially different from prior proposals or is responsive, in the opinion of the decision-making body, to negative findings set forth in the denial of the prior

application. For the purpose of this section, a development proposal shall be considered materially different if it involves a change in intensity of use of more than twenty-five (25) per cent.

Sec. 4-202. Zoning certificate.

(1) *Authority and purpose.* In order to ensure that all proposed development, including development permitted as of right, complies with the terms of this ordinance and to provide a mechanism for rendering interpretations of the provisions of this ordinance, the director of planning is authorized to certify that a proposed development, or a particular part of a proposed development, is in compliance with this ordinance.

(2) *Application.* A zoning certificate may be obtained from the director of planning upon submission of an application identifying the location, character and magnitude of an existing proposed use.

Sec. 4-203. Conditional uses.

(1) *Authority and purpose.* Conditional uses are those uses which are generally compatible with the uses permitted in a zoning district, but require individual review of their location, design and intensity in order to ensure their appropriateness on any particular parcel of land and the compatibility of the use with adjacent uses. Conditional use permits may be granted for those uses enumerated in each of the zoning districts established in Article V of this ordinance in accordance with the standards and

procedures of this section and the standards established for each conditional use in the district regulations.

(2) *Standards applicable to all conditional uses.* A conditional use permit shall be granted only if the applicant demonstrates that:

(a) The proposed conditional use is consistent with the purposes, goals, and objectives of Article III of this ordinance;

(b) The design of the proposed development minimizes adverse effects, including visual impacts of the proposed use on adjacent properties;

(c) The proposed use will not unduly burden essential public facilities and services including roadways, parking spaces, police and fire protection, drainage systems, refuse disposal, water and sewers, and schools;

(d) The applicant for conditional use approval has the financial and technical capacity to complete the development as proposed and has made adequate provision to guarantee the provision and development of any open space and other improvements associated with the proposed development;

(e) The proposed use complies with the regulations of general applicability set forth in Article V, Part 2 of this ordinance unless expressly modified by the particular provisions of Article V, Part 3 authorizing such use; and

(f) The proposed use complies with all additional standards imposed on it by the particular provisions of Article V, of this ordinance authorizing such use and any other requirement of the city code.

(3) *Conditions.* A conditional use permit may be issued subject to such conditions as the decision-making body determines are necessary to carry out the purposes of this ordinance and to prevent or minimize adverse effects upon other property in the neighborhood, including but not limited to, limitations on size and location, requirements for landscaping, lighting, and provisions of adequate ingress and egress, duration of the permit and hours of operation. Such conditions may include a requirement for further review and approval prior to the issuance of building permits and a provision for expiration of the permit in the event the applicant fails to comply with conditions of the permit.

(4) *Issuance of a minor conditional use permit.*

(a) Minor conditional uses shall be reviewed and approved or denied by the director of planning, subject to review by this commission in accordance with the provisions of this subsection.

(b) *Application.* An application for a minor conditional use permit shall be submitted to the director of planning in accordance with the provisions of Section 4-201(1)(3), accompanied by a nonrefundable fee as established from time to time by the city council.

(c) *Review.* Within fifteen (15) days after receipt of a complete application for minor conditional use permit, the director of planning shall issue a decision granting or denying the conditional use permit. The director of planning shall notify the applicant in writing of his decision.

(d) *Appeal to the commission of decision of the director of planning.* Within fifteen (15) days of the decision of the director of planning, the applicant or

any member of city council may appeal the decision to the commission. The appeal shall be placed on the commission's consent agenda at the next regularly scheduled meeting and the commission shall adopt the consent agenda or, by vote of a majority of the commission, remove a decision from the consent agenda. If a permit is removed from the consent agenda, the commission shall conduct a public hearing on the application for development approval, in accordance with the provisions of Section 4-210(4), and require payment of a reasonable fee by the applicant, if the applicant appealed, to cover any additional costs incurred by the city as a result of the hearing. The commission shall review the application, the decision of the director of planning and any additional information which may be submitted and the commission may affirm, reverse, or modify the decision. If a proposed decision is not removed from the consent agenda, adoption of the consent agenda shall constitute final approval of the conditional use permit.

(e) *[Review of decision].* Notwithstanding any other provision of this ordinance, at the city council agenda meeting following the decision of the commission either the applicant or any member of the city council may request a review of the decision of the commission by the city council which council may, if said review is granted, hold a hearing in accordance with this section. If the city council chooses to hear said matter, a hearing shall be heard thereon at the next regular council meeting. If an appeal is taken to the city council from the decision of the planning commission relative to minor conditional use, the decision of the planning commission and of

the planning director relative thereto shall automatically be vacated by such appeal, and it shall take the concurring vote of four (4) city council members to grant a minor conditional use permit.

(5) *Issuance of a major conditional use permit.*

(a) *Authority.* Major conditional uses shall be reviewed and approved or denied by the commission in accordance with the provisions of this subsection.

(b) *Application.* An application for major conditional use permit, authorized under the provisions of this subsection, shall be submitted to the director of planning in accordance with the provisions of Section 4-201(1)-(3), accompanied by a nonrefundable fee as established from time to time by the city council.

(c) *Review.* Within fifteen (15) days after receipt of a complete application for a major conditional use permit, the director of planning shall review the application and at least ten (10) days prior to the next regularly scheduled meeting of the commission send his recommendation on the proposed conditional use permit to the members of the commission, with a copy to the applicant.

(d) *Action by planning commission.* The commission shall conduct a public hearing on the application in accordance with the requirements of Section 4-210(4). The commission shall review the application, the recommendation of the director of planning and the testimony at the public hearing and within thirty (30) days from receipt of the director's recommendation grant a conditional use permit, grant a condition use permit

subject to specified conditions or deny the application.

(e) *Appeal to city council from the decision of the commission.*

(i) an applicant for major conditional use approval or any member of the city council may appeal the decision of the commission.

(ii) Notice of appeal shall be filed with the director of planning within fifteen (15) days of the decision of the commission.

(iii) Upon receipt of a notice of appeal, the director of planning shall place the denial of the application for conditional use approval on the agenda of the next regular meeting of the city council and give notice of such proceedings to all persons eligible for notice under the provisions of Section 4-201(4)(b)(ii).

(f) *Action by city council on appeal.* The appeal to the city council shall automatically vacate the decision of the planning commission on a major conditional use permit application, and it shall take the concurring vote of four (4) city council members to grant any major conditional use. The city council shall review the application, the recommendation to the commission by the planning director, the decision of the commission, as vacated, and any additional information which may be submitted. Within thirty (30) days of the notice of appeal, the city council shall hold a public hearing and take action on said appeal.

(6) *Adjustments to an approved conditional use during development.* During the development of a conditional

use, adjustments to the approved use may be permitted as follows:

(a) *Technical adjustments.* The director of planning may authorize adjustments to an approved conditional use when such adjustments appear necessary in light of technical or engineering considerations first discovered during actual development. Such adjustments appear necessary in light of technical or engineering considerations first discovered during actual development. Such adjustments shall be consistent with the intent of this ordinance and the approved conditional use and shall be the minimum necessary to overcome the particular difficulty. Such adjustments shall be limited to the following:

(i) Altering the location of any structure by not more than ten (10) feet;

(ii) Altering the location of a parking area or road by not more than five (5) feet;

(iii) Altering the final grade by not more than ten (10) per cent of the originally planned grade;

(iv) Altering the location of required landscaping elements by not more than twenty (20) feet.

(b) *All other adjustments.* Any adjustments to an approved conditional use which are not technical in nature shall be granted only upon application to and approval of the commission, if a major conditional use, or the director of planning, if a minor conditional use. The commission or the director of planning, as the case may be, may approve an adjustment upon finding

that the proposed change is in substantial conformity with the original approval. If the commission determines that the adjustment is not a substantial conformity with the original approval, then the request shall be considered an amendment under the provisions of Section 4-203(7) hereof. Any party may appeal denial of an application for an adjustment to the city council or the commission within fifteen (15) days after the decision is rendered.

(7) *Amendments to conditional use permits.* A conditional use permit may be amended, extended, varied or altered only pursuant to the standards and procedures for approval in Sections 4-203(4) or (5).

(8) *Revocation of conditional use permits.* In addition to any other penalties and remedies for violation of this ordinance, every conditional use approval may be revoked for violation of any condition imposed upon such approval. The permit issued pursuant to the conditional use approval may be revoked only after the commission holds a public hearing and finds that the conditions of the permit have been violated. Any party may appeal a decision by the commission to revoke a conditional use permit to the city council within fifteen (15) days after the decision is rendered.

(9) *Limitations on approval of a conditional use permit.*

(a) Within one (1) year of conditional use approval, or such shorter time as may be established by an approved development schedule, if any, construction shall commence in accordance with the approved conditional use permit. Failure to commence construction within that period shall, unless an extension shall have been granted by

the commission, automatically render the conditional use permit null and void.

(b) A permit for a conditional use authorizes only the particular use for which it was issued and such permit shall automatically expire and cease to be of any force or effect if such use shall, for any reason, be discontinued for a period of six (6) consecutive months.

Sec. 4-204. Appeals.

(1) *Authority and purpose.* The board of zoning adjustment is hereby authorized to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance. An appeal may be initiated by any person aggrieved or by any officer, department, board or bureau of the City of Lake Charles affected by any decision of the administrative officer.

(2) *Application/notice of appeal.* An application/notice of appeal authorized under the provisions of this section shall be submitted to the director of planning in accordance with the provisions of Section 4-201(1)-(3), accompanied by a nonrefundable fee as established from time to time by the city council.

(3) *Review.* Within fifteen (15) days after the receipt of a complete application, the director of planning shall complete the review of the application and at least ten (10) days prior to the next regularly scheduled meeting of the board send a written recommendation to the board, with a copy to the applicant, setting forth whether the

appeal shall be granted or denied and the grounds for such recommendation.

(4) *Action by the board.* The board shall review the application the recommendation of the director of planning, conduct a public hearing on the application in accordance with the requirements of Section 4-201(4) and grant the appeal, grant the appeal subject to specified conditions, or deny the appeal.

(5) *Appeal.* Any person aggrieved by any decision of the board of zoning adjustment may at the next regularly scheduled city council agenda meeting file a written request with the city council of the City of Lake Charles for a review of the decision by said board of zoning adjustment and thereupon said city council shall grant a public hearing thereon. Additionally, any member of the city council may at the next city council agenda meeting request the city council review the decision of the zoning board of adjustment. In the event of an appeal to the city council, either by an aggrieved person, or upon the granting of an appeal requested by a city council member, the decision of the zoning board of adjustment shall be automatically vacated thereby and it shall take the concurring vote of four (4) city council members to grant an appeal or to grant an appeal subject to specified conditions.

Sec. 4-205. Variances.

(1) *Authority and purpose.* The board of zoning adjustment is hereby authorized to grant such variances from the literal terms of this ordinance where there are practical difficulties or unnecessary hardships so that the

spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(2) *Standards.* A variance shall be granted only if the applicant demonstrates that:

(a) The variance requested arises from a condition which is unique, not ordinarily found in the same zoning district;

(b) The condition which requires the variance arises from the regulations in this ordinance and not by any action of the property owner or applicant;

(c) The particular physical surroundings, shape or topographical conditions of the property would result in unnecessary hardship, as distinguished from a mere inconvenience, if the provisions of this ordinance were literally enforced;

(d) The variance will not be materially detrimental to other property in the vicinity; and

(e) The variance will not be contrary to the general spirit and intent of this ordinance.

(3) *Conditions.* Issuance of a variance may be subject to such conditions as are necessary to carry out the purposes of this ordinance and to prevent or minimize adverse effects upon other property in the neighborhood, including, but not limited to, limitations on size and location, requirements for landscaping, lighting, and ingress and egress.

(4) *Application.* An application for a variance authorized under the provisions of this section shall be submitted to the director of planning in accordance with the

provisions of Section 4-201(1)-(3), accompanied by a non-refundable fee as established from time to time by the city council.

(5) *Limitations on variances.*

(a) Variances shall not be granted which would:

(i) Permit a structure with a height, floor area ratio, or coverage ten (10) percent greater than otherwise permitted;

(ii) Permit the creation of a lot or parcel that cannot be developed in compliance with this ordinance and other regulations applicable thereto;

(iii) Permit the use of land or structure contrary to the use provisions of the applicable zoning district;

(iv) Permit an increase in signage above the amount permitted in Section 5-211 of this ordinance;

(v) Permit any reduction of the minimum building set-back required by Section 5-203(7) of this ordinance.

(b) No variance shall be valid for a period longer than six (6) months unless a building permit is issued and construction has commenced, or unless a certificate of occupancy is issued and a use commenced within such period.

(6) *Review.* Within fifteen (15) days after receipt of a complete application, the director of planning shall complete the review of the application and at least ten (10) days prior to the next regular scheduled meeting of the board, send a written recommendation to the board, with

a copy to the applicant, setting forth whether the variance should be issued or denied and the grounds for such recommendation.

(7) *Action by the board.* The board shall review the application, the recommendation of the director of planning, conduct a public hearing on the application in accordance with the requirements of Section 4-210(4) and shall grant the variance, grant the variance subject to specified conditions, or deny the variance.

(8) *Appeal.* Any person aggrieved by any decision of the board of zoning adjustment may at the next regularly scheduled city council agenda meeting file a written request with the city council of the City of Lake Charles for a review of said decision by said board of zoning adjustment and thereupon the city council shall grant a public hearing thereon. Additionally, any member of the city council may at the next city council agenda meeting request that the city council review the decision of the zoning board of adjustment. In the event of an appeal to the city council, either by an aggrieved person, or upon the granting of an appeal requested by a city council member, the decision of the zoning board of adjustment shall be automatically vacated thereby and it shall take the concurring vote of four (4) city council members to grant a variance or to grant a variance subject to specified conditions.

Sec. 4-206. Special exceptions.

(1) *Authority and purpose.* The board of zoning adjustment is hereby authorized to grant special exceptions to permit:

(a) The reconstruction of a nonconforming structure when the structure has been damaged or destroyed to the extent of less than fifty (50) per cent of the fair market value of the structure;

(b) A nonconforming use to change to another nonconforming use if the proposed use is a permitted use in a more restrictive classification;

(c) A nonconforming use to be expanded up to fifty (50) per cent of the floor area existing on the effective date of this ordinance;

(d) Any nonconforming sign or other nonconformity which is nonconforming solely because of failure to comply with regulations governing parking, landscaping, or lighting to continue as a special exception, subject to the standards of this section and conditions imposed by the board; and

(e) The completion of development commenced in accordance with a lawfully issued permit prior to the adoption of this ordinance or any amendment thereto, which when completed will be nonconforming, [sic] offer a wrongfully issued permit provided that the applicant can demonstrate that completion is necessary to ensure a reasonable rate of return on investment, under the following criteria:

(i) The rate of return shall be related to the applicant's debt to equity ratio in this project;

(ii) Expenditures for legal or other professional services unrelated to the design or construction of improvements shall not be considered development expenditures; and

(iii) Taxes paid shall not be considered development expenditures except for any increase in taxes which may result from the governmental approval or improvements actually constructed on the property;

(f) The reduction of the number of parking spaces required for any use by Section 5-208 provided that the applicant demonstrates that the characteristics of the proposed use are such that the parking proposed is adequate and that the reduction is necessary to fulfill one of the objectives of Article III;

(g) The increase of the distance from a proposed use to required parking as provided in Section 5-208 provided that the applicant demonstrates an adequate workable alternative;

(h) The substitution of alternative means of buffering adjacent land uses to the bufferyards required in Section 5-209 when the particular characteristics of a parcel of land preclude compliance, provided that the alternative means shall provide equivalent compatibility of adjacent uses.

(2) *Standards.* A special exception shall be granted only if the applicant demonstrates that:

(a) The proposed use is consistent with the policies of Article III of this ordinance;

(b) The location of the use, its nature, intensity, layout, and its relation to access streets is such that the pedestrian and vehicular traffic to and from the use will not be hazardous or inconvenient to the predominant residential or other prevailing character of the neighborhood; and

(c) The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall not hinder or discourage the appropriate development or use of adjacent land and buildings or impair the value thereof.

(3) *Conditions.* Issuance of a special exception may be made subject to such conditions as are necessary to carry out the purposes of this ordinance and to prevent or minimize the impact of the exception on the surrounding neighborhood, including, but not limited to, limitations on size, location, requirements for landscaping, lighting, hours of operation, parking or other reasonable conditions.

(4) *Application.* An application for a special exception authorized under the provisions of this section shall be submitted to the director of planning in accordance with the provisions of Section 4-201(1) – (3), accompanied by a nonrefundable fee as established from time to time by the city council.

(5) *Review.* Within fifteen (15) days after receipt of a complete application, the director of planning shall complete the review of the application and at least ten (10) days prior to the next regularly scheduled meeting of the board, send a written recommendation to the board, with a copy to the applicant, setting forth whether the special exception should be issued or denied and the grounds for such recommendation.

(6) *Action by the board.* The board shall review the application, the recommendation of the director of planning, conduct a public hearing on the application in accordance with the requirements of Section 4-201(4) and

shall grant the variance, grant the variance subject to specified conditions, or deny the variance.

(7) *Appeal.* Any person aggrieved by any decision of the board of zoning adjustment may at the next regularly scheduled city council agenda meeting file a written request with the city council of the City of Lake Charles for a review of the decision by said board of zoning adjustment and thereupon the city council shall grant a public hearing thereon. Additionally, any member of the city council may at the next city council agenda meeting request that the city council review the decision of the zoning board of adjustment. In the event of an appeal to the city council, either by an aggrieved person, or upon the granting of an appeal requested by a city council member, the decision of the zoning board of adjustment shall be automatically vacated thereby and it shall take the concurring vote of four (4) city council members to grant a variance or to grant a variance subject to specified conditions.

Sec. 4-207. Amendments.

(1) *Authority and purpose.* The city council is hereby authorized to amend the text of this ordinance or the official zoning map in light of changing conditions, rather than to relieve particular hardships or to confer special privileges. The city council is also authorized to designate historic districts and landmarks in accordance with the provisions of Section 5-307 of this ordinance.

In determining whether to amend the text of this ordinance or the official zoning map, the city shall consider the extent to which the amendment complies with

and implements Article III of this ordinance and the purposes of the applicable zoning district.

(2) *Initiation of amendment.* Amendments to the text of this ordinance or the official zoning map may be initiated by the city council, the planing commission, or any other resident of the City of Lake Charles. Any amendment initiated by a resident which involves a single parcel of land shall require the submission of an application to the director of planning in accordance with the provisions of Section 4-201(1) – (3), accompanied by a nonrefundable fee to cover the cost of review, as may be established from time to time by the city council.

(3) *Review.* After receipt of a complete application for amendment or a proposal for amendment initiated by the city council or commission, or upon receipt of a certified petition for annexation, the director of planning shall complete the review of the application, the proposal, or the petition for annexation and send a written recommendation to the commission, with a copy to the applicant, if any, setting forth whether the amendment should be granted or denied and, in the case of a petition for annexation, setting forth a recommended zoning district classification, and the grounds for any such recommendations as they relate to the standards in Article III and the purposes of the zoning district classifications set forth in Article V, Part 3, of this ordinance. Such recommendation shall be submitted to the commission at least fifteen (15) days prior to the required public hearings.

(4) *Action by commission.*

(a) The commission shall conduct a public hearing to consider any amendment to the text of this

ordinance, the official zoning map, or the appropriate zoning classification for land subject to a certified petition for annexation in accordance with the requirements of Section 4-210(4). Public hearings involving amendments to the official zoning map for more than two (2) acres of land, other than petitions for annexation, shall only be held during the months of February, June and October. Public hearings involving amendments to the official zoning map for less than two (2) acres of land shall be held only during the month of August except that public hearings for amendments to the official zoning map for less than two (2) acres of land may be held in the months of February, June, August and October during the first two (2) years after the effective date of this ordinance.

(b) If at any time during the conduct of a public hearing on a requested amendment, an applicant or any of his agents or representatives makes any representation as to the particular use which he intends to develop or that he intends to take any step or install any improvement which is not otherwise required by this ordinance, the application for an amendment to this ordinance shall be converted into a joint application for a major conditional use and shall be considered in accordance with the provisions of this section and Section 4-203(5).

(c) The commission shall review the proposed amendment, the proposed zoning district classification for land subject to an annexation petition, the recommendation of the director of planning, the testimony at the public hearing and recommend to the city council approval, approval subject to specified conditions, or

denial of the proposed amendment, or proposed zoning district classification for land subject to an annexation petition, or amendment and conditional use permit, as the case may be.

(5) *Action by city council.* The city council shall review the proposed amendment, the proposed zoning district classification for land subject to an annexation petition, the recommendations of the director of planning and the commission and any additional information which may be submitted. The city council shall grant, grant subject to conditions, or deny the proposed amendment or proposed zoning classification within thirty (30) days of receipt of the recommendation of the commission.

ARTICLE V. DEVELOPMENT REGULATIONS

PART 1. ZONING DISTRICTS AND MAP

Sec. 5-101. Zoning districts established.

(1) In order to carry out the goals and objectives of the policies in Article III hereof and the purposes of this ordinance, the following districts are hereby created:

(a) Residential Dwelling District.

(b) Neighborhood District.

(c) Mixed Use District.

(d) Business District.

(e) Industrial District.

(f) Downtown and Lakefront District.

(g) Charpentier District and Historic Landmarks.

(2) The designation "x" may be applied to any of the districts in subsection (1) to indicate an area of special opportunity subject to the provisions of Part 4 of Article V of this ordinance.

Sec. 5-102. Official zoning map.

(1) *Purpose.* The purpose of the official zoning map is to set forth the boundaries of the zoning districts established in Section 5-101 as they may be applied from time to time to all land within the corporate limits of the city.

(2) *Maintenance of map.* The originals of the zoning map shall be signed by the city clerk and the mayor and retained in the offices of the planning department. Copies of the zoning map shall be maintained by the director of planning and kept up-to-date by posting thereon all changes and subsequent amendments.

(3) *Inclusion of maps in ordinance.* Copies of the zoning map shall be included as Appendix C to this ordinance. The applicable district regulations, regulations of general applicability, and the provisions of the text of this ordinance shall apply to lots or parcels located within districts created by this ordinance, the boundaries of which districts are set forth on the zoning map of the City of Lake Charles.

PART 2. REGULATIONS OF GENERAL APPLICABILITY

Sec. 5-201. Permitted uses.

No structure or land in the City of Lake Charles shall hereafter be constructed, built, moved remodeled, reconstructed, used or occupied except in accordance with the requirements of the zoning district in which the structure or land is located as a nonconformity under the provisions of Section 5-205 and the regulations of general applicability of Part 2 of Article V of this ordinance.

Sec. 5-202. Conditional uses.

No structure or land shall be constructed, built, moved, remodeled, reconstructed, used or occupied as a conditional use under this ordinance except as provided under the procedures and requirements of Section 4-203.

Sec. 5-203. Development standards.

(1) *General.* Except as modified by the provisions for conditional uses, structures or parts thereof shall not be constructed, built, moved, remodeled, reconstructed, occupied or used such that the development standards exceed that specified in the zoning district in which the structure or use is located and the regulations of this part.

(2) *Sight triangle.* Except in the Downtown and Lakefront District, no structure, parking lot or landscaping, other than mowed grass and traffic or street signs, shall be erected, placed or maintained within the triangular area formed by the intersecting street/pavement lines and a straight line joining said street and pavement lines

at points which are forth (40) feet from the point of intersection, measured along said street/pavement liens.

(3) *Curb cuts.* No structure shall be constructed, built, moved, remodeled, reconstructed, occupied or used on any parcel of land unless access from the parcel to public roadways complies with the following standards:

(a) No curb cut shall exceed thirty-five (35) feet in width; and

(b) Each curb cut serving a land use that generates in excess of ten (10) average daily trips shall be spaced according to the following minimum distances:

(i) Local streets – Fifty (50) feet.

(ii) Collector streets – Seventy-five (75) feet.

(iii) Arterials – One hundred (100) feet.

(4) *Calculation of permitted density.* In calculating the amount of development permitted on a parcel of land, density or intensity shall be based on the net area of any parcel, excluding installed on-site improvements, such as roads, provided, however, that the gross area of any parcel of land shall be utilized for the calculation of permitted density or intensity in the event that on-site improvements have not been installed at time the application for development approval is filed.

(5) *Corner lots.* The front yard of a corner lot may be designated by the landowner in his application for development approval. In making such designation, consideration shall be given to the predominant front yards in the immediate vicinity. The minimum required yard on any other side of a corner lot which adjoins a public street

shall be one-half of the minimum front yard required for the use proposed to be located on the lot by the particular provisions of Article V, Part 3, applicable to such use.

(6) *Required front yard for developed areas.* Notwithstanding any other provision in this ordinance regarding required front yards, if forty (40) per cent or more of the frontage of a block is improved with buildings with less than required front yard for the applicable district, the required front yard shall be the average of the front yards of the improved lots.

(7) *Minimum building setback.* Notwithstanding any other provision of this ordinance, no building or portion thereof shall hereafter be constructed, moved, reconstructed, or enlarged within a distance of eight (8) feet from edge of pavement or roadway surface of any public street or highway.

(8) *Activities limited to authorized structures.* Except as otherwise permitted for an approved temporary use, no equipment or device which is designed for use primarily as a conveyance or for the transportation of persons or moveable property, shall be placed on any parcel of land for the purpose of providing shelter or enclosure for the storage or sale of goods, the conduct of services, the housing of persons, or any other activity normally conducted within a building or structure.

Sec. 5-204. Accessory uses.

(1) *Authorization.* Accessory uses are permitted in any zoning district in connection with any principal use

lawfully existing within such district provided that all development regulations are met.

(2) *Development standards.*

(a) All detached accessory structures and uses in any residential district, other than fences, shall be located in the rear or side yard of the residential unit;

(b) Except as provided in Section 5-203(2), fences may be located at any point on the lot;

(c) No accessory structure or use in a residential district shall occupy more than thirty-five (35) per cent of the total floor area of all structures on the entire lot.

(d) No accessory structure or use shall exceed the height of the principal structure to which it is accessory.

Sec. 5-205. Nonconformities.

(1) *Purpose.* The purpose of this section is to regulate the continued existence of uses, lots, and structures lawfully established prior to the effective date of this ordinance or any amendment thereto which do not conform to the provisions of this ordinance and which have not obtained special exception status under the provisions of Section 4-205. Nonconforming uses, structures and lots of record may continue in accordance with the provisions of this section.

(2) *Nonconforming users.*

(a) *Ordinary repair and maintenance.* Normal maintenance and repair of nonconforming uses may be performed.

(b) *Extension.* Unless a special exception is granted under the provisions of Section 4-205, nonconforming uses shall not be extended. The prohibition shall be constructed so as to prevent the enlargement of nonconforming uses by external additions to the structure in which such nonconforming uses are located and occupancy of additional land.

(c) *Relocation.* A structure housing a nonconforming use may not be moved unless the use shall thereafter conform to the limitations of the district into which it is moved.

(d) *Change in use.* A nonconforming use shall not be changed to any other use unless such use conforms to the provisions of this ordinance; provided, however, that a nonconforming use may be changed to another nonconforming use if it is a permitted use in a more restrictive classification and a special exception is granted by the board in accordance with the provisions of Section 4-205.

(e) *Termination.*

(i) Abandonment or discontinuance.

(aa) Subject to subsection (bb) below, where a nonconforming use is discontinued or abandoned for six (6) months, then such use may not be reestablished or resumed and any subsequent use must conform to the provisions of this ordinance.

(bb) In construing whether a use has been discontinued or abandoned, the intention of the owner or anyone else to continue a nonconforming use shall not be considered; abandonment of a nonconforming use by a lessee shall not bind the owner provided that the owner obtains legal control of the use within a reasonable time after abandonment by a lessee; abandonment due to institution of foreclosure proceedings shall not constitute abandonment under the provisions of this section until the mortgagee or purchaser at foreclosure sale takes possession or gains by a recorded legal transfer.

(ii) Damage or destruction. If a structure housing a nonconforming use is damaged or destroyed by fifty (50) per cent or more of the fair market value of the structure, then the structure may not be restored unless its use thereafter conforms to the provisions of this ordinance.

(3) *Nonconforming structures.*

(a) *Ordinary repair and maintenance.* Normal maintenance and repair of nonconforming structures may be performed.

(b) *Relocation.* A nonconforming structure which is moved shall thereafter conform to the regulations of the district in which it is located after such move.

(c) *Termination.*

(i) Abandonment. Where a nonconforming structure is abandoned for six (6) months,

then such structure shall be removed or converted to a conforming structure.

(ii) Damage or destruction. A nonconforming structure which is damaged or destroyed to the extent of fifty (50) per cent or more of the fair market value of said structure shall not be restored unless it conforms to the provisions of this ordinance.

(4) *Nonconforming lots of record.* Notwithstanding any other provision of this ordinance, a nonconforming lot of record may be developed with a single-family dwelling, provided that such a lot was not in common ownership with an adjoining lot of record at the time the nonconformity was created.

(5) *Nonconforming accessory uses and structures.* No nonconforming accessory use or structure shall continue after the principal structure or use shall have ceased or terminated unless such structure or use shall thereafter conform to the provisions of the district in which it is located.

(6) *Termination by amortization.* Any nonconforming use or structure may be terminated by the city council in accordance with the following procedures:

(a) The planning commission, upon recommendation of the director of planning, may designate an area within the city which merits special attention in regard to nonconforming uses, signs or structures.

(b) The planning department shall conduct an inventory of uses and/or structures within the area so designated in order to identify those

uses and/or structures which do not conform to the provisions of this ordinance.

(c) Upon completion of the inventory, the director of planning shall notify the owners of said uses and/or structures that they are nonconforming [and] that there are two (2) alternatives available:

(i) The owner may register his use and/or structure with the director of planning and request special exception status under the provisions of Section 4-205; or

(ii) If the owner fails to register and obtain special exception status, the director of planning may recommend termination of the use or structure in accordance with an amortization schedule.

(d) If the director of planning has recommended termination, the commission shall conduct a public hearing in accordance with the provisions of Section 4-201(4) and if it concurs, submit its recommendation to the city council.

(e) The city council shall review the recommendations of the director of planning, the commission, and the testimony at the public hearing and adopt an ordinance terminating the use or structure within a specified period or deny the recommendations of the director of planning and the commission.

Sec. 5-206. Temporary uses.

(1) *Authority.* Temporary uses are permitted in any zoning district, subject to the standards hereinafter established, provided that all temporary uses shall meet the

bulk regulations and parking requirements for the zoning district in which the use is located and provided that no temporary use shall be permitted to continue for such a length of time that it constitutes in effect a permanent use.

(2) *Particular temporary uses permitted.* Permitted uses include:

(a) Garage sales.

(b) Indoor and outdoor art and craft shows, exhibits and sales.

(c) Contractor's offices and equipment sheds, provided that such uses shall be limited to the period of actual construction and shall be terminated within one hundred twenty (120) days of the completion of construction.

(d) Sales of Christmas trees or other seasonal goods, provided that such sales are located on property with direct access to collector or arterial.

(e) Religious revival tents.

(f) A manufactured home, not otherwise permitted in the zoning district, for temporary, emergency housing in medical hardship cases, for a non-renewable period of up to six (6) months provided the following conditions are met: (1) Written certification of medical hardship is presented to the director of planning stating the nature and extent of the medical condition; (2) The manufactured home is adjacent to the lawfully permitted housing of one related by body or marriage; (3) A building permit for construction, repair or addition to the lawfully permitted housing has been issued; and (4) It is shown that there is no economically feasible alternative.

(g) Other temporary uses which are, in the opinion of the director of planning, consistent with the provisions of this section.

(h) Truck trailers used for the temporary storage of goods or equipment in connection with general retail sales and service establishments or industrial uses, provided that such use shall be limited to a nonrenewable period of sixty (60) days.

(Ord. No. 8283, § 2, 7-2-86)

Sec. 5-207. Home occupations.

(1) *Authority.* Home occupations shall be permitted in any residential dwelling unit provided that the home occupation complies with the lot size, bulk regulations and parking requirements of the zoning district in which the home occupation is located.

(2) *Purpose.* The regulations of this section are designed to protect and maintain the residential character of established neighborhoods while recognizing that particular professional and limited business activities are traditionally carried on in the home and are compatible with the long-term integrity of a residential neighborhood.

(3) *Particular home occupations permitted.* Permitted home occupations are:

(a) Homebound employment of a physically, mentally, or emotionally handicapped person who is unable to work away from home by reason of his disability;

(b) Office facilities for salesmen, sales representatives, and manufacturer's representatives when

no retail or wholesale sales are made or transacted on the premises;

(c) Studio or laboratory of an artist, musician, photographer, craftsman, writer, tailor, seamstress, or similar person provided that the existence of the home occupation will not increase the number of average daily automobile trips generated by the residence in which the home occupation is located;

(d) Office facilities for accountants, architects, beauticians, brokers, doctors, engineers, lawyers, insurance agents, realtors and members of similar professions, provided that the existence of the home occupation will not increase the number of average daily automobile trips generated by the residence in which the home occupation is located;

(e) Day care facilities provided that no more than nine (9) children are on the premises at any time.

(4) *Use limitations.* In addition to the requirements of the zoning district in which it is located, all home occupations shall comply with the following restrictions:

(a) No stock in trade shall be displayed or sold on the premises;

(b) The home occupation shall be conducted entirely within the enclosed principal structure, and shall not be visible from any residential structure or a public way;

(c) The home occupation shall not occupy more than ten (10) per cent of the floor area of the dwelling unit;

(d) There shall be no outdoor storage of equipment or materials used in the home occupation;

(e) No more than one vehicle shall be used in the conduct of the home occupation and any such vehicle which is of a commercial type with advertising or other such characteristics which distinguish it from a private automobile, shall be stored in an enclosed garage when not in use;

(f) No mechanical, electrical, or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare or other nuisance outside the residential or accessory structure shall be used;

(g) No home occupation shall be permitted which is noxious, offensive or hazardous by reason of vehicular traffic, generation or emission of noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, refuse, radiation or other objectionable emissions;

(h) No employee shall be permitted other than a resident of the dwelling;

(i) No sign shall advertise the presence or conduct of the home occupation, other than a nonilluminated name plate, which:

(i) Does not exceed one square foot; or

(ii) Does not exceed two (2) square feet if attached and mounted on the principal structure.

Sec. 5-208. Off-street parking requirements.

(1) *Purpose.* This section is intended to establish standards for the provision of off-street parking in order

to reduce congestion in the public streets and promote the public's safety and welfare by ensuring the availability of adequate off-street parking facilities in the city.

(2) *Number of required spaces.*

(a) Off-street parking spaces shall be provided for each use in accordance with the following requirements:

Residential dwellings	2 spaces/unit
Schools:	
Elementary and junior high schools	2 spaces/classroom
High schools, colleges, universities, and trade schools	10 spaces/classroom
Preschool educational facilities or child care centers	1 space/every 200 sq. ft.
Churches	1 space/every 4 seats
Public uses	1 space/500 sq. ft.
Neighborhood commercial	1 space/300 sq. ft.
Recreational facilities	1 space/300 sq. ft.
Institutional Uses	1 space/3 hospital beds plus 1 space/300 sq. ft. of office floor area or 1 space/120 sq. ft. if no medical facility is involved.

Shopping Centers:	
25,000 – 400,000 sq. ft. GLA	4 spaces/1000 sq. ft.
400,000 – 600,000 sq. ft. GLA	4.5 spaces/1000 sq. ft.
600,000 sq. ft. GLA + more	5 spaces/1000 sq. ft.
Business and professional offices	1 space/300 sq. ft.
Restaurants and entertainment uses	1 space/200 sq. ft.
General retail sales and services establishments	1 space/300 sq. ft.
Hotels or motels	1 space/room
Industrial uses including wholesale and warehouse uses:	
Up to 10,000 sq. ft. GFA	1 space/400 sq. ft. GFA
More than 10,000 sq. ft. GFA	25 spaces plus 1 per 3 employees

(b) When calculating the number of required off-street parking spaces, fractions of less than one-half shall be disregarded, and fractions of one-half or more shall be counted as one space.

(c) Two (2) or more uses can satisfy the number of required parking spaces by providing the spaces in the same structure or lot. Except as provided in subsection [(3), paragraph (a) and (b),] the number of spaces in the jointly used structure shall be equal to the sum of the requirements for each use set forth in subsection (a).

(3) *Reduction of required spaces.*

(a) Joint use up to fifty (50) per cent of required parking spaces may be permitted for two or more uses provided that:

(i) The applicant for development approval can demonstrate that the uses will not substantially overlap in hours of operation; or

(ii) The proposed development is a bank, office, retail sales establishment, or manufacturing company and the applicant intends to share parking facilities with a church, theater or restaurant.

(b) Joint use of up to one hundred (100) per cent of the required parking spaces may be permitted for churches or schools if the parking will be provided off-site, the total amount of required parking, provided in conjunction with a bank, office, retail sales establishment or manufacturing company.

(c) A reduction in parking requirements for any proposed use permitted as of right in the Downtown and Lakefront District may be permitted as a special exception under the provisions of Section 4-206, provided that:

(i) There is adequate parking available within a reasonable distance from the site;

(ii) Achievement of an overriding public policy requires the reduction of required parking.

(d) If an applicant for development approval can demonstrate that employee parking facilities will be provided off-site, the total amount of required parking, provided on-site or within five hundred (500) feet of the site, may be reduced up to fifteen (15) per cent.

(4) *Location of required parking spaces.* Required parking spaces shall be located as follows:

(a) Single-family detached and up to twenty (20) single-family attached dwelling units: On the same lot.

(b) All other uses: On the same lot or, subject to subsection (c), on the lot up to five hundred (500) feet from the principal building or use unless a special exception is granted under the provisions of Section 4-206.

(c) If the parking spaces are to be located on a lot other than the same lot of the principal building or use, a legal instrument assuring the continued availability of those required parking spaces shall be approved by the city attorney and recorded prior to issuance of development approval.

(5) *Design of required parking spaces.*

(a) Except as provided in subsection (b), each required parking space shall have minimum dimensions of eight (8) feet by eighteen (18) feet;

(b) Up to thirty (30) per cent of required parking spaces may be designated for use by subcompact automobiles, provided that each space is clearly marked for such use and no space so designated is less than eight (8) feet by sixteen (16) feet;

(c) Parking structures shall be set back from the property line the same distance as required for the principal structure in the district in which it is located;

(d) A bumper rail or wheel barrier shall be installed so that no part of parked automobiles can extend into the public right-of-way or into the landscaped area required in Section 5-209 hereof

or under an approved conditional use. A minimum of three (3) feet shall be provided from the property line to the wheelguard;

(e) Sufficient maneuver and access aisle shall be provided to permit vehicles to enter and leave in a forward motion in accordance with detailed design standards on file with the department of planning; and

(f) If lighting is provided, it shall be installed so that it does not reflect on adjacent properties or interfere with traffic.

(6) *Limitation on use of parking lots and structures.* No parking lot or structure may be used for the servicing, repair, or washing of motor vehicles.

Sec. 5.209. Bufferyards.

(1) *Purpose.* The purpose of this section is to promote the harmonious use of land through effective site planning and the use of landscaped, constructed or natural bufferyards between uses that are different in character and/or magnitude.

(2) *Bufferyards required.*

(a) Where required by paragraph (c) of this subsection, any developer who proposes to develop a use differing in character or magnitude from an existing use on a parcel of land that abuts the parcel proposed for development shall provide a bufferyard in accordance with the specifications of subsections (3), (4), and (5) of this section.

(b) Bufferyards shall be provided along the abutting property line from the point of the required

front yard to the point of the required rear yard of the parcel proposed for development. Except permitted fencing, no principal or accessory structure or any parking area shall be permitted in a required bufferyard.

(c) Bufferyards shall be required for a proposed use only where:

(i) The proposed use is of greater magnitude or more intensive character than an existing use, located on an abutting parcel of land, and the degree of difference between such abutting uses constitutes a major, intermediate, or minor difference in land use as defined by the provision of subsection (3) of this section; and

(ii) The proposed use is located or permitted as follows in relation to the existing use:

(aa) A proposed use in an Industrial District abuts an existing use in any other district; or

* * *

Sec. 5-301. Residential dwelling district.

(1) *Purpose.* To provide a residential neighborhood comprised of low-density residential uses predominated by detached structures.

(2) *Permitted uses.*

(a) Single-family detached dwellings.

(b) Accessory uses.

(c) Home occupations.

(d) Public uses.

(e) Agriculture.

(3) *Conditional uses.*

(a) *Minor conditional uses.*

(i) Single-family attached structures, provided that:

(aa) The density does not exceed seven (7) dwelling units per acre; and

(bb) The structure is located no closer than twenty (20) feet from any single-family detached structure.

(ii) Home businesses, provided that:

(aa) No more than one nonresident is employed at the business and if the resident of the premises is handicapped;

(bb) No more than two hundred fifty (250) feet of floor area is devoted to the home business; and

(cc) The home business meets all other criteria for a home occupation in Section 5-207 except for the nonresident employee.

(iii) Low-intensity recreational uses, provided that:

(aa) The parcel proposed for low-intensity recreational use has an area of a sufficient size to reasonably accommodate the use;

(bb) The operation of the use will not adversely affect the residential character of the neighborhood.

(iv) Churches, provided that:

(aa) The lot on which the church is located fronts on a collector or arterial street; and

(bb) The structure and any parking areas are buffered in accordance with the requirements of Section 5-209 for an intermediate difference in land use.

(v) Schools, provided that:

(aa) The floor area ratio of all buildings on the parcel does not exceed .35;

(bb) All outside lighting is shielded and/or directed to ensure that the lume of the light does not fall outside of the boundaries of the parcel on which the school is located; and

(cc) All structures or parking areas within fifty (50) feet of any side or rear lot line are buffered in accordance with the requirements of Section 5-209 for an intermediate difference in land use.

(vi) Hunting or fishing camps, provided that the parcel of land on which the development is located is within three hundred (300) feet of the banks of the Calcasieu River or other body of water subject to periodic flooding.

(vii) Manufactured housing units other than mobile homes, provided that:

(aa) The number of dwelling units does not exceed seven (7) units per gross acre of land;

(bb) The dwelling units are similar in appearance to other dwelling units permitted in the neighborhood;

(cc) The dwelling units are permanently installed;

(dd) No single dimension of a dwelling unit shall exceed two (2) times either dimension;

(ee) Off-street parking is provided in accordance with Section 5-208 and in a manner consistent with the predominant character of the neighborhood.

(4) *Development standards.*

(a) The proportion of lot area covered by buildings shall not exceed a maximum of forty (40) per cent on any parcel within this district.

(b) Except as provided for by an approved condition use, all development in the Residential Dwelling District shall conform to the development standards set out in Figure 1:

Sec. 5-302. Neighborhood district.

(1) *Purpose.* The purpose of this district is to provide a residential neighborhood with neighborhood services uses at a level consistent with and unlikely to disturb the long-term viability of the neighborhood as a residential neighborhood and to provide greater flexibility for the development of nonresidential uses in neighborhoods with a legally established nonresidential component.

(2) *Permitted uses.*

(a) Single-family detached dwellings.

(b) Single-family attached dwellings at a density no greater than seven (7) dwelling units per acre.

(c) Public uses.

(d) Low-intensive recreational uses.

(e) Churches.

(f) Accessory uses.

(g) Home occupations.

(3) *Conditional uses.*

(a) *Minor conditional uses.*

(i) Residential dwellings, provided that:

(aa) The density does not exceed twelve (12) dwelling units per acre;

(bb) No more than two (2) dwelling units re located on any individual lot; and

(cc) The side and rear lot lines are buffered in accordance with the requirements of Section 5-209 for minor differences in land use.

(ii) Home businesses, provided that:

(aa) No more than one nonresident is employed at the business;

(bb) No more than five hundred (500) feet of floor area is devoted to the home business; and

(cc) The home business meets all the requirements for a home occupation in Section 5-207 except for the non-resident employee.

(iii) Schools, provided that:

(aa) The floor area ratio of all buildings on the parcel does not exceed .35;

(bb) All outside lighting is shielded and/ or directed to ensure that the lume of the light does not fall outside of the boundaries of the parcel on which the school is located; and

(cc) All structures or parking areas within fifty (50) feet of any side or rear lot line are buffered in accordance with the requirements of Section 5-209 for an intermediate difference in land use.

(iv) Day care centers, provided that:

(aa) The site on which the facility is located fronts on a collector or arterial;

(bb) The facility is fenced or otherwise enclosed so that children cannot leave the premises without adult assistance;

(cc) No parking, loading or unloading areas are located between the structure and an adjacent residential lot;

(dd) All play areas are screened from adjacent residential lots.

(v) Manufactured housing units, other than mobile homes, provided that:

(aa) The number of dwelling units does not exceed seven (7) units per gross acre of land in the development;

(bb) The dwelling units are similar in appearance to other dwelling units in the neighborhood;

(cc) The dwelling units are permanently installed;

(dd) No single dimension of a dwelling unit shall exceed two (2) times any other dimension;

(ee) Off-street parking is provided in accordance with Section 5-208 and in a manner consistent with the predominant character of the neighborhood.

(b) *Major Conditional Uses.*

(i) Residential family dwellings, provided that:

(aa) The density does not exceed twelve (12) dwelling units per acre;

(bb) No residential structure is located closer than twenty (20) feet to any single-family detached structure; and

(cc) The side and rear lot liens are buffered in accordance with the requirements

of Section 5-209 for an intermediate difference in land use.

(ii) Manufactured housing units, other than mobile homes, provided that:

(aa) The number of dwelling units does not exceed twelve (12) units per acre.

(bb) The dwelling units are similar in appearance to other dwelling units permitted in the neighborhood;

(cc) The dwelling units are permanently installed;

(dd) No single dimensions of a dwelling unit shall exceed two (2) times either dimension;

(ee) Off-street parking is provided in accordance with Section 5-208 and in a manner consistent with the predominant character of the neighborhood.

* * *

occupies no more than fifty (50) per cent of the front footage of any block and no single use occupies more than two thousand five hundred (2,500) square feet.

(iv) Intensive recreational facilities, provided that:

(aa) The parcel of land on which the use is located fronts on a collector or arterial street;

(bb) All parking areas are located or buffered so that the headlamps of automobiles approaching, entering or

departing the use do not shine on to adjacent parcels of land;

(cc) All outside lighting and signage is shielded and/or directed to ensure that light does not shine directly into or onto any adjacent land;

(v) Restaurants, provided that:

(aa) The use involves no more than one thousand five hundred (1,500) square feet of food service floor area;

(bb) The parcel of land on which the use is developed is located at an intersection no less intense than the intersection of a collector street and a local street;

(cc) The hours of operation of the use are limited to between 6:00 a.m. and 11:00 p.m.;

(dd) All parking areas are located or buffered so that the headlamps of automobiles approaching, entering or departing the use do not shine on to adjacent parcels of land;

(ee) All outside lighting and signage is shielded and/or directed to ensure that light does not shine directly into or onto any adjacent land;

(ff) No curb cut is located within fifty (50) feet of the intersection; and

(gg) The use does not involve the sale of alcoholic beverages to be consumed off the premises.

(vi) Bars, provided that:

(aa) The use involves no more than one thousand (1,000) square feet of service floor area;

(bb) The parcel of land on which the use is developed is located at an intersection no less intense than a collector street;

(cc) The hours of operation of the use are limited to between 8:00 a.m. and 11:00 p.m.;

(dd) All parking areas are located or buffered so that the headlamps of automobiles approaching, entering or departing the use do not shine on to adjacent parcels of land;

(ee) All outside lighting and signage is shielded and/or directed to ensure that light does not shine directly into or onto any adjacent land; and

(ff) No curb cut is located within fifty (50) feet of the intersection.

(4) *Development standards.*

(a) The proportion of lot area covered by buildings shall not exceed a maximum of forty (40) per cent on any parcel within this district.

(b) Except as provided for an approved conditional use, all development in the Neighborhood District shall conform to the development standards set out in Figure 2:

RESIDENTIAL DISTRICT

Figure 1.

Use	*Density*	*Lot Size*	*Yards Front (feet)*	*Side (feet)*	*Rear (feet)*	*Max. Height (feet)*
Single-family detached	7 du/a	6,000 sq. ft.	30	5	10	35
Single-family attached	(7 du/a)	6,000 sq. ft.	30	5	10	35
Churches	(–)	1 acre	50	10	10	35
Manufactured housing development	(7 du/a)	6,000 sq. ft.	30	5	10	35
Schools	(FAR .35)	1 acre	50	10	10	35
Public uses	FAR .35	1 acre	50	10	10	35
Accessory uses	–	–	30	5	5	35
Recreation (low intensive)	(–)	–	50	5	5	35

() Parentheses indicate intensity permitted as a conditional use.

NEIGHBORHOOD DISTRICT
Figure 2.

Use	*Density*	*Lot Size*	*Front (feet)*	*Yards Side (feet)*	*Rear (feet)*	*Max. Height (feet)*
Single-family detached	7 du/a	6,000 sq. ft.	30	5	10	35
	(12 du/a)	6,000 sq. ft.	30	5	10	35
Single-family attached	7 du/a	6,000 sq. ft.	30	5	10	35
	(12 du/a)	6,000 sq. ft.	30	5	10	35
Schools	FAR .35	1 acre	50	10	10	35
Churches	–	1 acre	50	10	10	35
Public uses	FAR .35	–	50	10	10	35
Recreation (low intensive)	–	–	50	10	10	35
Recreation (Intensive)	(FAR .35)	–	50	10	10	35
Neighborhood commercial	(2,500 sq. ft.)	5,000 sq. ft.	30	10	10	35
Restaurants	(1,500 sq. ft.)	5,000 sq. ft.	30	10	10	35
Bars	(1,000 sq. ft.)	5,000 sq. ft.	30	10	10	35
Manufactured housing development	7 du/a	6,000 sq. ft.	30	5	5	35

() Parentheses indicate intensity permitted as a conditional use.

* * *

APPENDIX C. RESERVED.

APPENDIX D. FEE SCHEDULE

If any fee required as authorized by this ordinance is not set forth with particularity in this appendix, the city may establish a reasonable fee as amended form time to time. The following fee schedule has been determined to facilitate administrative, clerical and advertising costs associated with development review:

Amendments
- $400.00 up to 5 acres
- $50.00 for each successive acre up to $2,000.00

Board of zoning adjustment
- Appeals: $75.00
- Special exceptions: $75.00
- Variances: $50.00

Conditional use permits
- Minor conditional use: $35.00 (if appealed $75.00)
- Major conditional use: $35.00 (if appealed $75.00)
- Planned Development: $100.00
  - Minor: $150.00
  - Major: $200.00

Certificate of zoning compliance
- $15.00

Occupancy license
- $15.00

(2)

Supreme Court, U.S.
F I L E D
DEC 7 1995
CLERK

No. 95-733

In The

Supreme Court of the United States

October Term, 1995

WILEY STEWART,

Petitioner,

vs.

CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION and JAMES E. SUDDUTH, MAYOR OF LAKE CHARLES,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

TERRY THIBODEAUX
Counsel of Record
THE CARMOUCHE LAW FIRM
Attorneys for Respondents
One Lakeshore Drive, Suite 1900
P.O. Drawer 2001
Lake Charles, LA 70602-2001
(318) 433-0355

7917
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

19 pp

QUESTIONS PRESENTED

The issues presented by the petition of Wiley Stewart are:

1. Whether the Court of Appeals erred in finding no clearly erroneous findings of fact, abuse of discretion or error of law and thereby affirming the opinion of the trial court finding no discriminatory intent in the denial of Stewart's zoning application;

2. Whether the Court of Appeals erred in finding no clearly erroneous findings of fact, abuse of discretion or error of law and thereby affirming the conclusion of the trial court that Stewart failed to establish a prima facie case of discrimination by proof of discriminatory impact or that if a prima facie case had been established, Respondents had shown a legitimate non-discriminatory basis for the denial of Stewart's zoning application.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Citations	ii
Statutes Involved	2
Statement of the Case	2
Summary of Argument	6
Reasons for Denying the Writ	7
Conclusion	15

TABLE OF CITATIONS

Cases Cited:

Burrell v. City of Kankakee, 815 F.2d 1127 (7th Cir. 1987)	11
Huntington Branch NAACP v. Town of Huntington, 844 F.2d 926 (2nd Cir. 1988)	8, 12
In Re Malone, 592 F. Supp. 1135 (E.D. Mo. 1984), *aff'd*, 794 F.2d 680	7, 12
Keith v. Volpe, 618 F. Supp. 1132 (D.C. Cal. 1985), *aff'd*, 858 F.2d 467 (9th Cir. 1988)	13

Contents

Page

McCauley v. City of Jacksonville, N.C., 739 F. Supp. 278 (E.D.N.C. 1989) 11, 12, 13

McDonald Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) 7

Metropolitan, Etc. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977), *cert. denied*, 434 U.S. 1025, 98 S. Ct. 1817, 36 L. Ed. 2d 668 ..... 12, 13

Secretary, HUD on behalf of Herron v. Blackwell, 908 F.2d 864 (11th Cir. 1990) 8

United States v. City of Birmingham, Michigan, 727 F.2d 560 (1984) 7

United States v. United States Gypsum Company, 333 U.S. 364, 68 S. Ct. 525, 92 L. Ed. 746 (1948), *rehearing denied*, 333 U.S. 869, 68 S. Ct. 788, 92 L. Ed. 1147 (1948) 7

Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974) 14

No. 95-733

In The

Supreme Court of the United States

October Term 1995

WILEY STEWART,

Petitioner,

vs.

CITY OF LAKE CHARLES, LAKE CHARLES PLANNING AND ZONING COMMISSION, AND JAMES E. SUDDUTH, MAYOR OF LAKE CHARLES,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, City of Lake Charles, Lake Charles Planning and Zoning Commission and James E. Sudduth, Mayor of Lake Charles, respectfully request that this Court deny the petition for writ of certiorari which seeks review of the Fifth Circuit's opinion below. That opinion is not reported and is reprinted in the petition for certiorari at Appendix A.

STATUTES INVOLVED

The statutory provision invoked by Petitioner's complaint is the Fair Housing Act, 42 U.S.C. § 3601, *et seq*. The pertinent text of same is set forth in Petitioner's Appendix (Appendix E, pages 1E-18E).

STATEMENT OF THE CASE

Petitioner Stewart filed an Application for a Minor Conditional Use Permit with the City of Lake Charles, the purpose of which Permit was to allow the construction of 36 single family attached units, commonly described as duplexes. Stewart's financing was dependent upon approval of a 90% guarantee of his loan from the Department of Housing and Urban Development. Stewart maintained that he had received verbal assurances or commitments from HUD. In fact, Stewart received no such approval from HUD. Any commitment from HUD must be in writing and the agency is prohibited from making, and does not, in fact, make any verbal commitment. Stewart, at best, had only preliminary conversations with individuals at HUD.

The site plan provided to the City of Lake Charles was very preliminary and lacking in detail. Petitioner's architect admitted that the drawings were preliminary and that Stewart had not even done a preliminary check on the availability of city services, such as water and sewer. As a courtesy to Stewart, the City of Lake Charles, through its Department of Planning and Development, initiated a review by various city departments. The City went forward with his project based on verbal approval from the various departments, even in the absence of Stewart's technical compliance with the Zoning Ordinance.

Stewart had entered a buy sell agreement with the owner of the property involved, the Gray Estate. There was an American Legion Post situated on the northeast corner of the subject property. The Gray Estate contacted that Post regarding encroachment of the Post parking lot on the property it proposed to sell to Stewart. The receipt of this letter triggered opposition to this development.[1]

The opposition was based on a number of concerns. The American Legion Post had been situated on this property for many years. Most of the individuals involved did not even realize, at least at the early stages, that the proposed developer was an African-American. The development of this property by Stewart would remove the parking lot used by the American Legion. This would cause a concurrent traffic problem because the legionnaires would be parking on residential streets. The legionnaires were concerned about the potential loss to their revenue from bingo games sponsored at the Post. These concerns were voiced to the Director of the Department of City Planning, an African-American, and three City Councilmen, one of whom was also an African-American.

The opposition was also concerned with maintaining the residential character of their neighborhood. The homeowners in the area were concerned that the development of an apartment type complex would effect the value of their homes. This is an area of mostly older homes with many retirees. These individuals had purchased their homes in reliance upon the zoning of that area to be single-family residential, and stood to lose substantial

---

1. The property for the American Legion Post had been donated by the Gray Estate many years before. There was disagreement between the American Legion Post and the Gray Estate as to whether the area used for parking had been donated, as well. The Gray Estate took the position that the parking lot in question was not part of the original donation and that it was free to sell that property.

equity in their homes if the integrity of that zoning was not maintained. These concerns were not a subterfuge. So real were these concerns that these property owners, at a later date, participated in raising money on behalf of the American Legion Post, to purchase the property from the Gray Estate.

None of these actions was in any way linked to racial animus. There was no evidence identifying the racial balance of potential occupants of this medium income housing. The project was to be financed by HUD. HUD's regulations require that rental units sponsored or insured by HUD be made without consideration of race and HUD imposes no quota regarding the racial composition of the occupants of the development.

The neighborhood involved is a fully integrated neighborhood. Both White and African-American homeowners in the area signed opposition petitions. Even Petitioner Wiley Stewart admitted that he became aware of opposition from African-American residents of this neighborhood. One of the City Councilmen, David Painter, testified that all of the African-Americans who lived in the immediate vicinity of the property joined in the protest and some eventually participated in the fund raising efforts to donate this property to the American Legion Post.

The office of Planning and Development for the City of Lake Charles approved Wiley Stewart's Application for a Minor Conditional Use Permit. This approval was timely appealed by City Councilman, David Painter. At the next Planning and Zoning Commission meeting, a public hearing was held. The Planning and Zoning Commission voted 4-0 to overturn the action of the City Planner and to deny Stewart's Application for a Minor Conditional Use Permit. An appeal was taken of this by Stewart and the matter was placed on the City Council agenda. The City Council voted not to place the matter on the agenda.

The 1990 census indicates that the racial population of Lake Charles was 57.5% White, 41.6 African-American and .9% other. Evidence was introduced of two areas which include the subject property. These areas describe the immediate surroundings. The area near this proposed development had a demographic population of 64% White, 35% African-American to 76% White, 24% African-American. General testimony from numerous witnesses estimated the African-American composition of this neighborhood to range from 25% to 30%. The data indicates that there is a general mix of Whites and African-American residents in the area immediately surrounding this proposed site.

Zoning for residential and other uses is scattered throughout the City of Lake Charles. There are residential zones (such as the one involved here) in both predominately White and predominately African-American neighborhoods.

Zoning in the City of Lake Charles is divided between residential, neighborhood, mixed use, business use and industrial. The types of construction allowed to burden each of these uses is set forth in the Zoning Ordinance. In the various areas zoned as "mixed use" or "business use", Petitioner Stewart could have constructed a 36 or 50 unit complex. These areas are located throughout the City of Lake Charles, both in predominately African-American, predominately White and mixed neighborhoods. If he had elected to construct this development in any of these areas, Stewart would not have been required to obtain any additional authorization from the City of Lake Charles in the form of a Minor Conditional Use Permit or zoning variance. In addition to these areas, Stewart could have constructed a 36 unit project, of the type encompassed by his original Application, in those areas zoned as "neighborhood". These areas are also scattered throughout the City of Lake Charles. Wiley Stewart took no action to consider any alternative site.

Stewart was the only investor in this project and did not have the personal resources to undertake a project with a price tag of $1,750,000 - $2,500,000. He had to receive, at a minimum, a 90% guarantee from HUD. As has been previously noted, he had never received any assurance from HUD. There was no guarantee that Wiley Stewart, as a developer, was going to qualify for a 90% commitment from HUD. HUD had undertaken no market analysis and had no knowledge of whether there was a market for medium income housing in Lake Charles at that time. There was no feasibility study done on behalf of Stewart and no independent verification of the availability of 100% financing, which was required by his Buy-Sell Agreement. Stewart did not hold a license as a general contractor, which would be a requirement for a multi-million dollar project. Stewart held only a local basic contractor's license, which affords a $50,000 project limit. A project of this nature would require a developer to have a State contractor's license, which requires, both state and local level testing and certification. Stewart had never shown an ability to build a project of this magnitude or any ability to meet the financing obligations.

SUMMARY OF ARGUMENT

The petition articulates no compelling reason for the grant of the writ of certiorari. There is no deviation of the Court of Appeals from established Supreme Court precedent or conflict on any important federal question.

Petitioner alleges two factual theories of discrimination. First, he alleges discrimination against him individually, as he is an African-American. Second, he alleges discrimination based upon the potential racial composition of his proposed development.

The lower court, as affirmed by the Fifth Circuit, made a

factual finding that there had been no showing of discrimination in the actions of the City of Lake Charles in dealing with Wiley Stewart. The evidence was actually the opposite. The municipal defendants endeavored to assist Stewart in his application process and the lack of any racial motivation is soundly enforced by the fact that the principal actor for th City of Lake Charles, the Director of Planning and Development, is also an African-American. As to the second of these factual theories, not a scintilla of evidence was introduced to establish the potential racial composition of the 36 unit duplex development. Thus, Stewart failed to establish any prima facie case of disparate impact.

REASONS FOR DENYING THE WRIT

The matter below was a bench trial. The findings of fact of the district judge may be set aside by the Court of Appeals only upon a finding that they are clearly erroneous. *United States v. United States Gypsum Company,* 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948), *rehearing denied,* 333 U.S. 869, 68 S. Ct. 788, 92 L. Ed. 1147 (1948); *United States v. City of Birmingham, Michigan,* 727 F.2d 560 (1984) (citing *United States v. Gypsum Company, id.*).

A violation of the Fair Housing Act may be proved by establishing either discriminatory intent or by a prima facia proof of discriminatory impact. *In Re Malone,* 592 F. Supp. 1135, 1166 (E.D. Mo. 1984), *aff'd,* 794 F.2d 680. In cases involving proof of discriminatory impact, the test articulated in *McDonald Douglas Corp. v. Green,* 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) has been adopted:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if the

> plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, non-discriminatory reason" for its action. Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are, in fact, mere pretext.

Secretary, HUD on behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990). *See also, Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926 (2nd Cir. 1988).

In this case, Petitioner argues that the City's handling of his Application for Minor Conditional Use Permit evidenced discrimination. Petitioner argues that the actions of the City evidence some conspiracy to discriminate against him.[2]

Stewart's claims of a discriminatory conspiracy evaporate upon an examination of the applicable zoning ordinances. The Application must be complete and that determination of completeness must be made by the Director.[3] This is the policy

---

2. Stewart interpreted innocent events as part of a conspiracy. He complained about the delay in acting on his application. The delay was caused by the inadequacy of his application. Stewart contended that the delay was intentional. He testified that an indicia of this conspiratorial plot was a note written at the bottom of Councilman David Painter's June 22, 1990 objection to Wiley Stewart's original plan for construction of more than 36 units. Stewart testified that the note on this letter stated "Hold all final approval on this application until after the July meeting with David and Chuck.".(a reference to two councilmen). The note actually stated "Hold all final approvals until the matter is fully discussed w/David & Chuck." Wiley Stewart, under cross-examination, agreed that it was possible that he had misread the letter.

3. Section 4-201(3)(a). Petition Appendix H, page 17h.

and procedure followed by the Department of Planning and Development. In their effort to assist Wiley Stewart, the Department did not return this Application to him due to its incompleteness. Rather, they strived to fill in the gaps through their own efforts in contacting various City departments to ascertain the additional information needed to make the Application complete. They acted on the Application at the earliest possible date. Review of this matter by these various City departments was necessary as all Applications for Conditional Uses require a showing that the proposals would not unduly burden essential public facilities and services, including parking spaces, police and fire protection, drainage systems, refuse disposals, water and sewers and the like.[4]

The July 11 Notice of Approval was given in compliance with the Ordinance which requires that City Council members being given notice of approval within seven days of the granting of that approval.[5] On July 17, 1990, David Painter, a member of the City Council, appealed the approval. The Director Ernie Broussard, in compliance with the Procedure of the Planning Commission to hold public hearing on all appeals, issued Notices of Public Hearing and the matter was set for hearing on the next available Planning and Zoning Commission meeting set for August 20, 1990. The decision of the Planning and Zoning Commission to deny Wiley Stewart's Application was set on the agenda meeting for the City Council on August 28, 1990. Clearly, the City followed its normal procedures in dealing with Wiley Stewart's Application. The only variance from these procedures that could remotely be said to exist is one in favor of Wiley Stewart. The Department of Planning and Development could have simply rejected Stewart's Application out of hand and

---

4. Section 4-203(2). Petition Appendix H, page 26h.

5. Section 4-201(4)(b)(ii)(bb). Petition Appendix H, page 20h.

required that he do the necessary leg work to comply with the Ordinance. Their fault, if any, was in trying to help Wiley Stewart instead of rigidly applying the Zoning Ordinance and denying his Application.

The trial court specifically found that Stewart's application was incomplete and that the City did comply with its own ordinance in the handling of Wiley Stewart's application. The trial court found that the application was approved on July 11 and that the appeal of this application and the handling of that matter on appeal was in compliance with the Zoning Ordinance, the Court found that the Respondents did not possess an intent to discriminate against Wiley Stewart on the basis of his race or the case of prospective tenants of his proposed development.

As we have shown above, Petitioner's evidence of discrimination is predicated on his subjective misreading of the evidence and misapplication of the Zoning Ordinance. As we have set forth more fully in the Statement of Facts preceding, the motivation of the opposition to this plan was in no way arbitrary. The residents of this area had purchased their homes many years before have relied upon the zoning of this neighborhood to be residential. They merely desired to maintain that neighborhood characteristic. There is no evidence that this was in any type of subterfuge to achieve segregation. The evidence is absolutely to the contrary. This was a fully integrated neighborhood. Nor, did the City have in place any type of zoning procedure which in any way limited developers such as Wiley Stewart. Stated otherwise, there was no prohibition to development within the City of Lake Charles of this type of housing in neighborhoods which are predominately white, or having a white occupancy greater than that of the neighborhood at issue here. The evidence shows that there were areas of the City having a substantially greater percentage of white occupancy (as high as 96.7% and 95.8%) where Wiley Stewart could have built a 36 unit complex without resort to any application for re-zoning.

The evidence further negates any plan of any discriminatory intent. The Director of City Planning, whom Wiley Stewart accuses of participating in this scheme, is African-American. So the Assistant City Attorney who responded to Wiley Stewart's Complaint. Nearly all of the African-American residents in the neighborhood to be immediately affected by this proposed development also opposed the development. The City followed its normal procedure and afforded Wiley Stewart every opportunity to present his Application for a Minor Conditional Use Permit. The City approved an Application for Minor Condition Use for a smaller development located some distance away from the subject site. The only "evidence" of discrimination is Wiley Stewart's unsubstantiated assertions that this was a "all white community", which it was not, and that the opposition to his plan came from "the whites", which it did not. Lastly, it is important to note here, as it is important to note in a disparate impact case, Wiley Stewart failed to introduce any evidence indicating that the availability of housing to minorities was at all affected by the denial of his Application. Even assuming that there was some disparity in the treatment of Wiley Stewart's Application, of which he had established none, the evidence did not prove a violation of the Fair Housing Act by reason of discrimination in the absence of evidence establishing that the denial of this Application had some impact in denying minority residents housing. *Burrell v. City of Kankakee*, 815 F.2d 1127, 1130 (7th Cir. 1987).

Petitioner has pointed to no statement which can be fairly said to be an indicator of racial bias. The inference from the statement of an individual of some racially motivated opposition does not confer racial motive on the City even if that individual holds an elected position. Even when the motivation of one to make a speech or statement can be characterized as suspect, it does not follow the action of the governing body was so motivated. *McCauley v. City of Jacksonville, N.C.*, 739 F. Supp.

278, 282 (E.D.N.C. 1989). *See also, Metropolitan, Etc. v. Village of Arlington Heights,* 558 F.2d 1283, 1292 (7th Cir. 1977), *cert. denied,* 434 U.S. 1025, 98 S. Ct. 1817, 36 L. Ed. 2d 668.

As to the second method of establishing a violation of the Fair Housing Act, discriminatory impact, Petitioner's evidence was non-existent. There was not a scintilla of evidence regarding the probable or potential racial composition of the tenants in this proposed development. Under a disparate impact analysis, a prima facie case is established only by showing that the challenged practice of the defendant "actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect". *Huntington Branch, NAACP v. Town of Huntington, supra* at 934. No evidence was presented in this case. The area involved is an integrated neighborhood having a black to white ratio (in that immediate area) of anywhere between 35% black to 64% white to 25% black, 75% white. This fact is borne out by the black opposition to this particular project. There was no showing that the denial of this Application would have any disparate impact or that it in any way maintained or promoted a segregated housing pattern. The lack of any evidence for which one could infer that a significantly higher percentage of the occupants of their proposed development would be African-American compels a finding that no disparate impact has been proven. *McCauley v. City of Jacksonville, N.C., supra* at 282.

Nor has Petitioner's evidence established any pattern of racial segregation in housing as it pertains to Wiley Stewart's projected project. Even if such segregation pattern is present, that does not establish that a more significant number of African-Americans than already present in this neighborhood would have occupied the subject development such as to give rise to any claim under the Fair Housing Act. *In re Malone, supra* at 1167. In *Metropolitan, Etc. v. Village of Arlington Heights, supra* (frequently referred to as *Arlington II*), the Seventh Circuit dealt

with a federally subsidized low cost housing project on hearing on remand from the United States Supreme Court. The Seventh Circuit determined that a finding of discrimination sufficient to establish a violation of the Act would turn upon proof of the Village's refusal to re-zone for this project *if* it was established that no other land other than the subject property within Arlington Heights was properly zoned for the development. The evidence introduced in this case and which we have already covered at length clearly shows that there were many areas of the city zoned for a similar development. Many of these areas were located in parts of the City of Lake Charles with a substantially greater white occupancy than that surrounding the subject site. Again, the evidence fails to establish any disparate impact. This was the conclusion reached by the trial court in its findings of fact.

Even if Petitioner can be said to have proved a prima facie case, the Respondent are entitled to overcome that case by articulating some legitimate non-discriminatory reason for the challenged practice. *McCauley v. City of Jacksonville, N.C. supra* at 282. *See also, Keith v. Volpe*, 618 F. Supp. 1132, 1148 (D.C. Cal. 1985), *aff'd*, 858 F.2d 467 (9th Cir. 1988).

The Seventh Circuit articulated four critical factors to determine under what circumstances conduct which produces a discriminatory impact but which was taken without discriminatory intent will violate the Fair Housing Act. These are: (1) how strong are the plaintiff's showing of discriminatory effect; (2) is there some evidence of discriminatory intent; (3) what is the defendant's interest in taking the action complained of and, (4) does the plaintiff seek to compel the defendant to affirmatively provide housing for members of minority groups or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing. *Metropolitan, Etc. v. Village of Arlington Heights, supra* at 1290. When we examined these four critical factors, only the last is in

any way in Petitioner's favor. Stewart did seek to restrain the City from interfering to the degree that he sought a change in zoning and did not ask the City of Lake Charles to undertake to construct housing. However, this is offset by the fact that Stewart did seek that the City affirmatively change or make allowance for a use not presently approved by the zoning regulation.

As to each of the remaining critical factors, Petitioner's evidence fails completely. He has made no showing of discriminatory effect. There is no showing that the group effected by this constitutes substantially more African-Americans than whites. The rules of the Department of Housing and Urban Development demand that housing constructed pursuant to the issuance of a HUD letter of guaranty be rented without regard to race and no evidence was introduced regarding the purported impact of the development on this neighborhood. There is additionally no evidence of any discriminatory intent. Obviously, the City's interest in maintaining the consistency of the City's zoning regulation is great. The City is acting within the ambit of its legislatively granted authority. Municipalities have traditionally been afforded wide discretion in zoning. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974). When a governmental body is acting within the ambit of this authority, such discretion must be afforded and there is reluctance to find that this action violates the Fair Housing Act. *Metropolitan, Etc. v. Village of Arlington Heights, supra* at 1293. Therefore, even if we treat Petitioner's prima facie case as having been established, the City's interest in maintaining its zoning rules under the criteria articulated in *Arlington Heights II* establishes that there is no violation of the Fair Housing Act.

Wiley Stewart's case rests solely on his assertions and perceptions of racial hostility. The trial court correctly concluded that there was no evidence other than Stewart's own testimony to support his allegations that race motivated the denial of his

permit. Wiley Stewart's testimony is demonstrably not credible. He characterized this as an all white neighborhood yet the unimpeached evidence drawn from the U.S. Census clearly indicates that it is not. He asserts that all of his opposition came from whites but, the evidence shows that it did not. Stewart maintains that he had secured verbal assurances from HUD in that he would receive a 90% insurance letter of guaranty. Witnesses from HUD testified that no verbal guaranty can be given and that no guaranty could be given regarding what percentage of insurance could be offered to Stewart. Stewart claims he would be the general contractor on this project. However, Stewart does not hold a state license as a contractor. Stewart claimed that he had the ability to be bonded for this size project. Yet, his Answer to Interrogatories, clearly show that he never had qualified for such a bond. Wiley Stewart's testimony was clearly exaggerated and self-serving.

CONCLUSION

This Petition for Certiorari urges only erroneous factual findings or the misapplication of a properly stated rule of law. The petition for certiorari should be denied.

Respectfully submitted,

TERRY THIBODEAUX
Counsel of Record
THE CARMOUCHE LAW FIRM
Attorneys for Respondents
One Lakeshore Drive, Suite 1900
P.O. Drawer 2001
Lake Charles, Louisiana 70602-2001
(318) 433-0355